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TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1908

No. 6, Original

STATE OF MISSOURI, COMPLAINANT,

vs.

STATE OF KANSAS.

BILL IN EQUITY.

FILED DECEMBER 21, 1908.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1908.

No. 6, Original.

STATE OF MISSOURI, COMPLAINANT,

vs.

STATE OF KANSAS.

BILL IN EQUITY.

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1 Supreme Court of the United States.

At the Capitol of the United States, in the City of Washington and District of Columbia, being the present seat of the National Government of the United States, on the second Monday of October (being the 8th day of the same month), in the year of our Lord One Thousand Nine Hundred and Six, and of the Independence of the United States the one hundred and thirty-first, the Supreme Court of the United States met agreeably to law.

2 And afterwards, to wit, on the 17th day of December, A. D., 1906, the following entry appears of record, viz:

3 No. 14, Original.

STATE OF MISSOURI, Complainant,
vs.
STATE OF KANSAS.

On motion of Mr. Herbert S. Hadley, of counsel for the complainant, it is ordered by the Court that leave be, and the same is hereby, granted to file a bill of complaint herein, and process is ordered to be issued.

DECEMBER 17, 1906.

And on the same day, to-wit, on the 17th day of December, A. D. 1906, a motion for leave to file Bill of Complaint was filed.

4 Which said motion is in the words and figures following, viz:

In the Supreme Court of the United States, October Term, 1906.

Original, No. 14.

STATE OF MISSOURI, Complainant,
vs.
STATE OF KANSAS, Defendant.

In Equity.

Motion for Leave to File Bill of Complaint.

Herbert S. Hadley, Attorney-General of Missouri.

5 In the Supreme Court of the United States, October Term, 1906.

Original, No. 14.

STATE OF MISSOURI, Complainant,
vs.
STATE OF KANSAS, Defendant.

In Equity.

Motion for Leave to File Bill of Complaint.

Now comes the State of Missouri, through Herbert S. Hadley, its Attorney-General, and moves the court for leave to file the bill of complaint herewith exhibited in a controversy which has arisen between the State of Missouri and the State of Kansas, touching the boundaries and jurisdiction of said states, and that proper process may issue thereon notifying the defendant that such a bill has been filed, and that said defendant may appear and defend the same.

HERBERT S. HADLEY,
Attorney-General of Missouri.

(Endorsed:) Supreme Court U. S. October Term, 1906. No. 14, original. State of Missoari, Complainant, *vs.* State of Kansas. Motion for leave to file bill of complaint. Filed Dec. 17, 1906.

6 And on the same day, towit, on the 17th day of December, A. D. 1906, an appearance for complainant was filed in the words and figures following, viz:

Order for Appearance.

Supreme Court of the United States.

No. 14, Orig., October Term, 1906.

THE STATE OF MISSOURI, Complainant,
vs.
THE STATE OF KANSAS.

The Clerk will enter my appearance as Counsel for the Complainant.

(Name.) HERBERT S. HADLEY,
(P. O. Address.) *Jefferson City.*

☞NOTE.—Must be signed by a member of the Bar of the Supreme Court United States. Individual and not firm names must be signed.

[Endorsed:] Supreme Court U. S. October Term, 1906. Term No. 14, Original. Appearance for Compl't. Filed Dec. 17, 1906.

7 And on the same day, towit, on the 17th day of December, A. D. 1906, a bill of complaint was filed in the words & figures following, viz:

In the Supreme Court of the United States.

Original, No. 14.

STATE OF MISSOURI, Complainant,
vs.
STATE OF KANSAS, Defendant.

In Equity.

Herbert S. Hadley, Attorney-General of the State of Missouri.

8 In the Supreme Court of the United States.

Original, No. 14.

STATE OF MISSOURI, Complainant,
vs.
STATE OF KANSAS, Defendant.

In Equity.

To the Honorable the Chief Justice and Associate Justices of the Supreme Court of the United States of America:

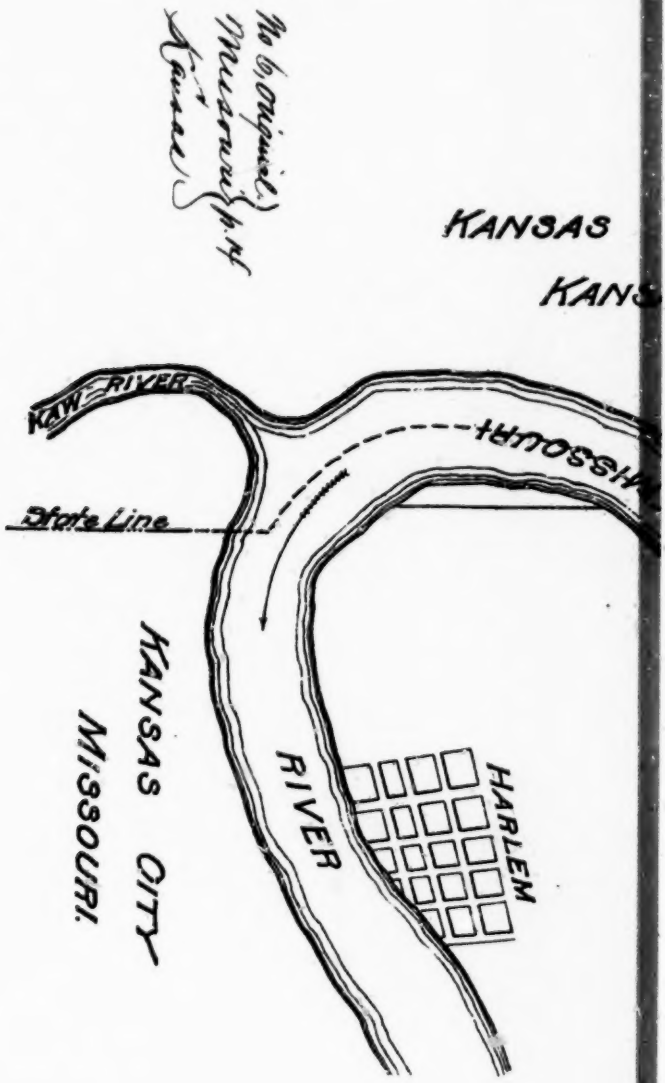
The complainant, the State of Missouri, by its Attorney-General, Herbert S. Hadley, brings this, its bill, against the State of Kansas, and thereupon the complainant states that heretofore, to wit, in the year 1816 a certain line was surveyed by John C. Sullivan, as principal surveyor, and Samuel K. Colwell, as assistant surveyor, under the authority of a letter from William Rector, Surveyor of Lands of the United States in the territories, now states, of Illinois and Missouri, dated July 23, 1816, appointing
9 the said Sullivan and Colwell to survey the boundary lines of that tract of country north of the Missouri river that was acquired by the United States by the treaty with the Great and Little Osages the 10th of November, 1808. That said line was afterwards adopted as the western boundary of the State of Missouri upon her admission to the Union, so that the western boundary of said State at all points north of the Missouri river was a definite straight line running due north and south, until the 28th day of March, 1837, upon which day the extension of the limits provided for and agreed upon in an act of Congress, approved the 7th day of June, 1836, and an act of the State Legislature of Missouri, approved the 16th day of December, 1836, took effect upon the issuing of the proclamation of the President of the United States. Complainant states that for a long time prior to said 28th day of March, 1837, and ever since the admission of said State of Missouri to the Union, the land lying east of said Western boundary of said State, had its status established as Missouri land, bounded upon a definite straight line and independent of the vicissi-

tudes and changes of the Missouri river, which lay in the immediate vicinity thereof.

Complainant states that at the time of said original survey by John C. Sullivan, above referred to, at a point a little more than one mile north of the bank of the Missouri river, which was the beginning point of said survey the surveyors encountered a broad channel or branch of the Missouri river extending across said aforesaid boundary line and into the territory, afterwards the
10 State of Missouri, which said channel is marked upon the survey as a slough, but the lines surveyed as aforesaid were run straight across said slough and independent of its meanderings, and complainant states that the change of the location of the western boundary of the State of Missouri came about in this way:

In February of the year 1831, the State, by an act of its Legislature, petitioned Congress to add to the State that part of the Indian country lying east of the Missouri river and west of the Missouri State line. On September 17, 1836, a treaty was made between the United States and various tribes and bands of Indians, by virtue of which this country between the Missouri State line and the Missouri river could be added to the State of Missouri, and on October 15, 1836, these various bands and tribes of Indians united in a deed to the United States, conveying the lands lying between the State of Missouri and the Missouri river, and south of a line run due west from the northwest corner of said State The complainant states the fact to be that from the beginning point of said line, as surveyed by John C. Sullivan, on the bank of the Missouri river for a distance of two and one-half miles north, said line practically conformed with the left bank of said Missouri river, and that at the time hereinbefore mentioned, when territory was added to the western boundary of the State and when the western boundary of the State was extended westerly to the Missouri river there was no territory existing between said western boundary
11 and the said Missouri river at said point, extending from one-half mile north of the beginning point on the bank of the Missouri river to a distance of two and one-half miles north, and that at said point there was no change made in said western boundary of Missouri, which was then, and always has been, a definite straight line running due north and south, independent of the Missouri river. The only point where any change was made in said western boundary of Missouri was where territory was added to the State, lying between said western boundary and the Missouri river, to wit, beginning at a point about two and one-half miles north of the beginning point of said survey of John C. Sullivan and from said two and one-half mile point to the northwest corner of the said State of Missouri. All of which will fully and accurately appear from the official surveys and records in the office of the surveyor General of the United States and in the several offices where records are kept in said State of Missouri.

Complainant states that after the 28th day of March, 1837, the Missouri river, at the joint in question, moved toward the east by a process of cutting away its eastern or left bank, and by its waters taking partially the course of the original slough as shown upon the original survey made by John C. Sullivan, so that eventually there was left a large island, to wit, approximately four hun-



(Endorsed) Supreme Court U.S. October Term 1906. No. 14,0
State of Missouri, Complainant, vs. State of K
Bill of Complaint. Filed DEC 17. 1906.

No. 6 Original
Missouri v. Kansas

KANSAS CITY
KANSAS

True State Line

KAW RIVER

MISSOURI

State Line

Former State Line

ISLAND IN QUESTION

HARLEM

RIVER

KANSAS CITY
MISSOURI.

CLAY COUNTY
MISSOURI.

W
S
N
E

(Endorsed) Supreme Court U.S. October Term 1906. No 14, Original
State of Missouri, Complainant, vs. State of Kansas
Bill of Complaint. Filed Dec 17. 1906.

No. 6, Original.
Missouri, Kansas

KANSAS CITY
KANSAS

True State Line

KAW RIVER

MISSOURI

State Line

Former State Line

ISLAND IN QUESTION

HARLEM

RIVER

KANSAS CITY
MISSOURI.

CLAY COUNTY
MISSOURI.

W
N
S
E

(Endorsed) Supreme Court U.S. October Term 1906. No 14, Original
State of Missouri, Complainant, vs. State of Kansas
Bill of Complaint. Filed Dec 17. 1906.

dred acres lying between the eastern branch of said Missouri river at the point aforesaid, and a western branch, which said western branch practically conforms with the western State line
12 of Missouri, as will appear from a plat of the locality hereto attached, and to which reference is here made.

Complainant states that said island is located almost immediately adjacent to the cities of Kansas City, Missouri, and Kansas City, Kansas, two cities of great importance and increasing population; that at the present time the eastern branch or channel of the Missouri river is the deepest channel, but the western branch is the widest channel, and the eastern branch is the one which is usually navigated by steamboats passing up and down said river Your complainant states that by reason of the fact that the main or navigable channel of the river is now located to the east of said island, the State of Kansas, defendant herein, through its officers and agents, asserts jurisdiction, sovereignty and control over the territory embraced in said island, and complainant states that it is highly important to the States of Missouri and Kansas that the question of boundary and jurisdiction should be speedily and finally settled; that heretofore the peace of the people of the states of Missouri and Kansas, especially in the county of Clay in Missouri, and the county of Wyandotte in Kansas, has been seriously disturbed in consequence of the conflict of jurisdiction arising from the difference of opinion as to the location of the State line between said counties and states at said point.

Complainant states that the State of Missouri has no adequate relief at law, and as the controversy herein involves questions
13 of jurisdiction and sovereignty, it is respectfully prayed that the State of Kansas may be made a defendant in this proceeding, and that she may be permitted and required to answer the matters and things herein set forth, and upon final hearing that the boundary between said States at the point named be by the order of this court ascertained and established; that the right of possession, jurisdiction and sovereignty of the State of Missouri to all of the territory east of the line heretofore marked and run out by said John C. Sullivan and Samuel K. Colwell in 1816, be decreed to the State of Missouri, and that said State of Missouri be quieted in her rights thereto, and that the defendant, the State of Kansas, be forever enjoined and restrained from disturbing the said State of Missouri, her officers and her citizens in the full enjoyment and possession of the territory lying east of said line, and that such other and further relief may be granted as the nature of the case may require. And may it please your Honors to grant unto complainant not only the relief hereinbefore prayed in this bill, but also a writ of subpœna of the United States of America, directed to the State of Kansas, commanding her on a day certain to appear and answer to this bill of complaint, and to abide and perform such orders and decrees in the premises as to your Honors shall seem meet and proper, and as required by the principles of equity and good conscience.

HERBERT S. HADLEY,
Attorney-General of the State of Missouri.

(Here follows map marked page 14.)

15 And afterwards, towit, on the 18th day of December, A. D. 1906, an appearance for the defendant was filed in the words and figures following, viz:

Order for Appearance.

Supreme Court of the United States.

No. 14, Orig., October Term, 1906.

THE STATE OF MISSOURI, Complainant,
vs.
THE STATE OF KANSAS, Defendant.

The Clerk will enter my appearance as Counsel for the Defendant.
(Name.) C. C. COLEMAN,
(P. O. Address.) *Topeka, Kans.*

☞NOTE.—Must be signed by a member of the Bar of the Supreme Court United States. Individual and not firm names must be signed.

[Endorsed:] Supreme Court U. S. October Term, 1906. Term No. 14, Original. Appearance for Defendant. Filed Dec. 18, 1906.

16 And on the same day, to wit, on the 18th day of December, A. D., 1906, a waiver of process was filed in the words and figures following, viz:

17 Supreme Court of the United States, October Term, 1906.

No. 14, Original.

THE STATE OF MISSOURI, Complainant,
vs.
THE STATE OF KANSAS, Defendant.

Waiver of Process.

Comes now the defendant by C. C. Coleman, Attorney General of said State its counsel of record and waives the issuance and service of any process summons or writ of Subpœna herein—and voluntarily enters appearance as defendant in this cause.
Dec. 18, 1906.

C. C. COLEMAN,
Attorney General.

Endorsed: No. 14 Original. Supreme Court of the United States, October Term, 1906, No. 14 Original. Missouri *vs.* Kansas. Waiver of Process. Filed Dec. 18th, 1906.

18 And afterwards, to wit, on the 16th day of April, A. D., 1907, the following entry appears of record, viz:

19 No. 14, Original.

STATE OF MISSOURI, Complainant,
vs.
STATE OF KANSAS, Defendant.

On motion of Mr. A. B. Browne, in behalf of counsel, leave is hereby granted to file the answer and cross-bill of the defendant in this cause.

April 16, 1907.

20 And on the same day, to-wit, on the 16th day of April, A. D. 1907, a motion for leave to file answer and cross-bill and answer and cross-bill were filed in the words and figures following, viz:

21 No. 14, Orig'l.

In the Supreme Court of the United States.

Original.

THE STATE OF MISSOURI, Complainant,
vs.
THE STATE OF KANSAS, Defendant.

Motion for Leave to File Answer and Cross-Bill, and Answer and Cross-Bill of the State of Kansas to the Bill of Complaint of the State of Missouri.

Fred S. Jackson, Attorney-general of Kansas, Solicitor for defendant.

22 In the Supreme Court of the United States.

Original, No. —.

THE STATE OF MISSOURI, Complainant,
vs.
THE STATE OF KANSAS, Defendant.

Motion for Leave to File Answer and Cross-Bill.

To the Honorable Chief Justice and the Honorable Associate Justices:

The State of Kansas, defendant, by Edward W. Hoch, governor, and Fred S. Jackson, attorney-general, humbly shows as follows, to wit:

That the State of Missouri has heretofore filed her complaint against the State of Kansas, in this honorable court, praying a decree defining and marking the boundary-lines dividing said states, and for the determination of matters set forth at length in said bill of complaint.

Now, therefore, the State of Kansas herewith humbly presents her answer to said bill of complaint, and, according to the usual practice in such cases, accompanies her said answer by a cross-bill making the State of Missouri defendant thereto. She humbly prays that her said answer and cross-bill may be filed, and that subpœna may be allowed to issue out of this honorable court directed to the Hon. Joseph W. Folk, governor of the state of Missouri, and the Hon. Herbert S. Hadley, attorney-general of said state, commanding them to appear and answer said cross-bill upon a day to be named by this honorable court.

23

FRED S. JACKSON,
Attorney-general of Kansas.

C. C. COLEMAN,
Of Counsel.

24 In the Supreme Court of the United States.

Original, No. —.

THE STATE OF MISSOURI, Complainant,
vs.
THE STATE OF KANSAS, Defendant.

Answer and Cross-bill.

The Answer of the State of Kansas, Defendant, to the Bill of Complaint of the State of Missouri, Complainant.

This defendant, now and at all times hereafter saving to herself all and all manner of benefit of exception or otherwise that can or may be had or taken to the many errors, uncertainties and imperfections in the said bill contained, for answer thereto, or to so much thereof as this defendant is advised is material or necessary for her to make answer to, answering says:

I.

The defendant admits that in the year 1816 a certain line was surveyed by John C. Sullivan, as principal surveyor, and Samuel K. Colwell, as assistant surveyor under the authority of a letter from William Rector, surveyor of lands of the United States in the territories, now states, of Illinois and Missouri, dated July 23, 1816, appointing the said Sullivan and Colwell to survey the boundary-lines of that tract of county north of the Missouri river that was acquired by the United States by the treaty with the Great and Little Osages on November 10, 1808; and that said line was after-

25

wards adopted as the western boundary of the State of Missouri upon her admission to the Union, so that the western boundary of said state at all points north of the Missouri river was a definite straight line running due north and south until the 28th day of March, 1837, upon which day the extension of the limits provided for and agreed upon in an act of Congress approved the 7th day of July, 1836, and an act of the state legislature of Missouri approved the 16th day of December, 1836, took effect upon the issuing of the proclamation of the President of the United States.

And defendant admits that for a long time prior to the 28th day of March, 1837, and ever since the admission of said State of Missouri to the Union, the land lying east of said western boundary of said state had its status established as Missouri land, bounded upon a definite straight line, and independent of the vicissitudes and changes of the Missouri river.

II.

Defendant denies that the beginning point of this said survey made by the said John C. Sullivan was at a point a little more than one mile north of the bank of the Missouri river, but on the contrary states the fact to be that the said survey made by the said Sullivan began on the left bank of said Missouri river opposite the
26 mouth of the Kansas river (and defendant says that this Kansas river ever since the year 1808 has been known indifferently among geographers, public authorities and common citizens as the Kansas or Kaw river), and defendant denies that the aforesaid surveyors encountered a broad channel or branch of the Missouri river extending across said aforesaid boundary-line and into the territory afterwards the state of Missouri, which said channel is marked upon the survey as a slough; and defendant admits that the lines surveyed as aforesaid were run straight to the northward, regardless of any pretended slough and independent of any meanderings of said pretended slough.

And defendant admits that in the year 1831 the State of Missouri, by an act of its legislature, petitioned Congress to add to the state that part of the Indian country lying east of the Missouri river and west of the Missouri state line, and that, on September 17, 1836, a treaty was made between the United States and various tribes and bands of Indians by virtue of which this country between the Missouri state line and the Missouri river could be added to the State of Missouri; and defendant admits that on October 15, 1836, these various bands and tribes of Indians united in a deed to the United States, conveying the lands lying between the State of Missouri and the Missouri river and south of a line run due west from the northwest corner of said state.

And defendant denies the fact to be that the true beginning point of said line as surveyed by John C. Sullivan to the bank of the Missouri river for a distance of two and one-half miles north on
27 said line practically conformed with the left bank of said Missouri river, and that at the time hereinbefore mentioned, when territory was added to the western boundary of the state and when the western boundary of the state was extended westerly to the

Missouri river, there was no territory existing between said western boundary and the said Missouri river at said point extending from one-half mile north of the beginning point on the bank of the Missouri river to a distance of two and one-half miles north, and defendant denies that there was no change made in said western boundary of Missouri. But, on the contrary, defendant alleges the fact to be that the Missouri river was west of a line so drawn and surveyed to the northward from the true point of the beginning of the aforesaid Sullivan survey.

And defendant further says and alleges the fact to be that there was a substantial and considerable quantity of land lying between the line surveyed by Sullivan aforesaid and the Missouri river and between the left bank of the Missouri river and the median line of the main channel thereof, so that the aforesaid grant of Congress, and the said treaty and the said act of the Missouri legislature and the change of boundary-line, in fact and substance caused a material change of boundary-line and conveyed to the State of Missouri land over which it had theretofore had no jurisdiction, and extended the jurisdiction of said state and the boundary-line of said state from the original state line to the median line of the main channel of the Missouri river.

28 And defendant denies that the only point wherein any change was made in said western boundary of Missouri was where territory was added to the state lying between said western boundary and the Missouri river, to wit: Beginning at a point about two and one-half miles north of the beginning point of the said survey of said Sullivan and from said two-and-one-half-mile point to the northwestern corner of the said State of Missouri; and defendant denies that the truth of the allegation of plaintiff in reference thereto will fully and accurately appear from the official surveys and records of the surveyor-general of the United States and in the several offices where records are kept in the State of Missouri.

III.

Defendant admits that after the 28th day of March, 1837, the Missouri river at the point in question moved toward the east by a process of cutting away its eastern or left bank, but defendant denies that the waters of the Missouri took partially the course of the original slough as shown upon the original survey as made by John C. Sullivan; and defendant denies the truth and accuracy of the plat of the locality attached to complainant's bill of complaint, and denies all inferences and conclusions to be drawn from said plat to the prejudice of the rights of this defendant; but defendant alleges the fact to be that the main current and the main and principal channel of the said Missouri river lie to the eastward of said island aforesaid and between said island and the State of Missouri.

And defendnt further says that the formation of the said island was subsequent to the year 1837, and that for many years after 1837 the Missouri river slowly moved to the east by the process of

29 erosion on its left bank and by depositary sands and alluvial deposits on and near its right bank, and that as the said river

moved eastward the main current or navigable channel of the river became deeper and stronger near the left bank, causing the waters of said river to become more shallow and slower in current on the right bank, until, at a time long after the survey heretofore mentioned was made, and long after the western line of the State of Missouri became fixed on the median line of the main channel of said river by the aforesaid process of accretion or deposit, an island appeared in said river to the west of the median line of the main channel of said river, and that said island has continued to grow to its present size by said process of receiving the alluvial deposits of the waters of the river, and that the said island is wholly west of the median line of the main channel of the Missouri river, and that the said island is wholly within the jurisdiction of the State of Kansas.

IV.

And defendant further alleges that on June 3, 1825, the Kansas tribe of Indians also ceded to the United States all claim they had to any lands in the State of Missouri, and further ceded and relinquished all other lands which they then occupied, or to which they had title or claim, lying west of the said State of Missouri, and within the following boundaries: Beginning at the entrance of the Kansas into the Missouri river; from thence north to the northwest corner of the state of Missouri; thence north and west.

30 And in February, 1831, the State of Missouri, by a memorial from the legislature to Congress, petitioned the United States for an addition of the country west of the line running from the mouth of the Kansas north, and between said line and the Missouri river, alleging that it was a small slip of land that had been acquired, by the treaty of June 3, 1825, from the Kansas Indians. The petition declared that the line from the mouth of the Kansas north was about 100 miles long; that the country was settled, and rapidly settling, to its utmost verge; and that, as the Missouri river was the only great highway of this region, and could not be reached through a country inhabited by Indians, and being without roads, a cession of it to that state was necessary and proper.

June 7, 1836, Congress acceded to the request of Missouri, and granted to that state all jurisdiction over the lands lying between its then western line and the Missouri river, making the river the western boundary.

And defendant further says that at the session of the Missouri general assembly, in 1832, an amendment to the constitution of the state of Missouri was proposed, and ratified thereafter, as follows:

"That the boundary of the state be so altered and extended as to include all the tract of land lying on the north side of the Missouri river, and west of the present boundary of this state, so that the same shall be bounded on the south by the middle of the main channel of the Missouri river, and on the north by the present northern boundary-line of the state, as established by the constitution, when

31 the same is continued in a right line to the west, or to include so much of said tract of land as Congress may assent."

And to gratify the request of the State of Missouri to have its limits enlarged, as said state had memorialized Congress, an act of Congress was passed, June 7, 1836, as follows:

"CHAP. LXXXVI. An act to extend the western boundary of the State of Missouri to the Missouri river.

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That when the Indian title to all the lands lying between the State of Missouri and the Missouri river shall be extinguished, the jurisdiction over said lands shall be hereby ceded to the State of Missouri, and the western boundary of said state shall be then extended to the Missouri river, reserving to the United States the original right of soil in said lands and of disposing of the same; provided, that this act shall not take effect until the President shall by proclamation declare that the Indian title to said lands has been extinguished, nor shall it take effect until the State of Missouri shall have assented to the provisions of this act."

And defendant further says that a treaty was made on the 17th of September, 1836, with the Iowas, Sacs, and Foxes, reciting the facts, so far as the Indians were interested, and also that it was desirable and necessary that the country should be attached to the State of Missouri; and thereupon these Indian tribes did cede and relinquish to the United States all their right and interest to the lands
32 lying between the State of Missouri and the Missouri river; and the United States were exonerated from the guaranty imposed on them by the treaty of 1830, known as the treaty of Prairie du Chien. And on the 27th of September, 1836, another band of the Sac and Fox tribes made a similar cession. And on the 15th of October, 1836, various bands of the Sioux, by another treaty, also assented to the cession, but in more definite terms: they gave a quitclaim to the United States of their interest in the lands "lying between the State of Missouri and the Missouri river, and south of a line running due west from the northwest corner of the state to the Missouri river."

And defendant says that in pursuance of the aforesaid act of Congress and the aforesaid treaties with the several tribes of Indians interested therein, and when all things precedent as required by said act were properly done and performed, the President of the United States, on March 28, 1837, did issue his proclamation whereby the western boundary of the State of Missouri was extended to the median line of the main channel of the Missouri river.

And defendant further says that the territories of the plaintiff state lying on the boundary-line between the State of Missouri and the State of Kansas in the vicinity of the aforesaid island and at and near the boundary-line in dispute in this suit are known, defined and declared by the laws of Missouri to be Platte county, Clay county, and Jackson county, in the state of Missouri, respectively, and the boundary-lines of said counties of Platte, Clay and Jackson
33 are described and declared by the public statutes of the plaintiff state to be as follows:

County Boundaries.

Revised Statutes of Missouri, A. D. 1879, volume 2.

SECTION 5198. Platte (county).—"Beginning in the middle of the main channel of the Missouri river, at a point where a prolongation south of the old boundary-line of the state would intersect the same; thence north with said boundary-line to the line run and marked by Matthew M. Hughes, under an act of the general assembly of 1838 and 1839; thence west with said line to the middle of the main channel of the Missouri river; thence down said river, in the middle of the main channel thereof, to the place of beginning."

SECTION 5177. Clay (county).—"Beginning at a point in the middle of the main channel of the Missouri river, where the prolongation south of the line between ranges twenty-nine and thirty would intersect the same; thence north with said range line to the northeast corner of section thirty-six, township fifty-four, range thirty; thence west with said line to the middle of the main channel of the Missouri river; thence down the Missouri, in the main channel thereof, to the place of beginning."

SECTION 5237. Jackson (county).—"Beginning in the middle of the main channel of the Missouri river, at a point where the western boundary-line of the state intersects the same; thence south to the line between townships forty-six and forty-seven; thence east with the said township line to the southeast corner of section thirty-
34 three of township forty-seven, range twenty-nine west; thence north with the subdivisional lines to the middle of the main channel of the Missouri river; thence up said river, in the middle of the main channel thereof, to the place of beginning."

V.

And defendant further alleges that it was the purpose of the legislature of the State of Missouri and of Congress, by the acts of the legislature of the State of Missouri aforesaid, and by the aforesaid memorial of the State of Missouri to the Congress of the United States, and by the act of Congress aforesaid and by the Indian treaties aforesaid, relating — the lands lying west of the first boundary-line of Missouri as surveyed by John C. Sullivan, to abandon entirely the original western boundary-line of the State of Missouri from the confluence of the Kansas river with the Missouri river for all purposes, and arbitrarily to establish a new boundary-line for the State of Missouri for all points north of the mouth of the Kansas river as aforesaid, to-wit: To make the median line of the main channel of the Missouri river the boundary-line of said state to the northwest corner of the State of Missouri.

VI.

Defendant further alleges that the State of Kansas, defendant herein, was admitted to the Union January 29, 1861, under a state

constitution defining her eastern boundary to be the western boundary of the State of Missouri, and at that time, and for many years before and after, the western boundary of Missouri north of the confluence of the Kansas river with the Missouri river, was
35 openly, notoriously and generally known to be and conceded to be the median line of the main channel of the Missouri river.

VII.

Answering further, defendant admits that the island which is in controversy is located almost immediately adjacent to the cities of Kansas City, Mo., and Kansas City, Kan., two cities of great importance and increasing population, and defendant admits the allegations in complainant's bill of complaint that the eastern branch or channel of the Missouri river is the deepest channel and that the western branch is the widest channel, and that the eastern branch is the one which is usually navigated by steamboats passing up and down said river, and defendant further says that the only deep and navigable channel and the only main channel of said river is the eastern branch, which is usually navigated, and is the only branch which is navigated by steamboats passing up and down said river; and defendant admits that, by reason of the fact that the main or navigable channel of the river is now located to the east of said island, the State of Kansas, defendant herein, through its officers and agents, asserts jurisdiction, sovereignty and control over the territory contained in said island; and defendant admits that it is highly important to the States of Missouri and Kansas that the question of boundary and jurisdiction should be speedily and finally settled.

36 VIII.

And said defendant, answering further, says that the State of Missouri has acknowledged and recognized the jurisdiction of the State of Kansas to the aforesaid island in controversy, and that the State of Missouri and the police authorities thereof have for many years recognized the boundary-line between the State of Kansas and the State of Missouri at all points north of the mouth of the Kaw river at its confluence with the Missouri river to be the median line of the main channel of the Missouri river, and by many legislative acts, proclamations, official communications, and by judicial decrees, the complainant, the State of Missouri, has accepted and acquiesced in the contention of the State of Kansas that the median line of the main channel of the Missouri river is the boundary-line between the parties to this controversy throughout the limits of the Missouri river from the confluence of the Kansas river northwards to the fortieth parallel of latitude.

IX.

This defendant now states, alleges and charges that, in addition to the foregoing specific denials, she denies all of the allegations of the bill of complaint adverse to the matters and claims set up in this

answer, and she calls upon the complainant to sustain the allegations of her bill of complaint, if any she can, by proof.

Wherefore, This defendant having fully answered, confessed, traversed and avoided or denied all the matters in the said bill of complaint material to be answered, according to her best
37 knowledge and belief, humbly prays this honorable court that the said complainant's bill may be dismissed, and that the defendant have and recover her reasonable costs.

Cross-Bill.

For cross-complaint and for affirmative relief, your orator, the State of Kansas, shows to the honorable chief justice and the honorable associate justices of the supreme court of the United States that the boundary-line between the State of Kansas, your cross-complainant, and the State of Missouri, your cross-defendant, from the middle of the Kansas river at its confluence with the Missouri river to the fortieth parallel of north latitude, is the median line of the main channel of the Missouri river, and that the State of Kansas has jurisdiction over the Missouri river to the median line thereof throughout its entire length between the said points, and that the State of Kansas has jurisdiction of all islands in said river which lie to the westward of the median line of the main channel of said Missouri river, and that one of the islands in said Missouri river over which the State of Kansas has complete and exclusive control is an island in the Missouri river about two and one-half miles north of the mouth of the Kansas river where the said Kansas river flows into the Missouri river, which island is of great value, and which is approximately 400 acres in extent, and which is situated westerly of the main channel of the Missouri river; and that the State of Missouri claims and pretends to have jurisdiction over said island, and the State of Missouri disputes, challenges and denies that the
38 State of Kansas has jurisdiction of the said island, and disputes, challenges and denies that the State of Kansas has jurisdiction to the median line of the main channel of the Missouri river at all points between the mouth of the Kansas river at the point of its confluence with the Missouri river to the fortieth parallel of north latitude, which acts of the State of Missouri are greatly to the injury and detriment of the State of Kansas and to the peace and welfare of the State of Kansas and to the citizens thereof; and the State of Missouri claims and pretends to claim judicial and state rights over certain riparian lands on the right and west bank of the Missouri river within the aforesaid limits. And your orator, the State of Kansas, says that the State of Missouri interrupts, disputes, challenges and denies the state sovereignty and control of the State of Kansas to the aforesaid island and to all the riparian land on the right and west bank of said Missouri river and to all islands lying west of the median line of the main channel thereof, and to the lands under the water of the Missouri river between the right bank thereof and the median line of the main channel thereof; and that your

orator, the State of Kansas, has greatly suffered through the unwarranted assumption of the pretended rights of the State of Missouri in reference thereto, and that the assumptions and pretenses of the State of Missouri have greatly disturbed the peace of Kansas and of the people of Wyandotte county, in the State of Kansas; and that your orator, the State of Kansas, had no adequate remedy
38½ against the aforesaid wrongful assumptions and pretensions of the State of Missouri except in equity, by the justice of this honorable court.

Wherefore, Your orator, the State of Kansas, to the end that she may obtain the relief to which she is justly entitled in the premises, prays the court and your honors to grant to her your writ of subpœna, directed to the State of Missouri, and to Joseph W. Folk, governor of the said State of Missouri, and to Herbert S. Hadley, attorney-general of the State of Missouri, commanding and requiring them and each of them, on a day certain, to appear herein and answer, not under oath, an answer under oath hereby being expressly waived, to the several allegations in this cross-bill contained.

And that upon final hearing may it please your honors to adjudge and decree that the boundary-line dividing the States of Kansas and Missouri north of the confluence of the Kansas river with the Missouri river is the line which begins at the median line of the main channel of the Missouri river, where the same is intersected by the fortieth parallel of north latitude, and follows down the thread and median line of the main channel of the Missouri river southerly and southeasterly to a point where the said median line of the main channel of the Missouri river is intersected by a perpendicular — erected from the middle of the Kansas river at its confluence with the Missouri river, and that the state of Kansas has jurisdiction throughout such limits to all the lands under said river west of the median line of the main channel thereof, and to all the islands in said river west of the median line of the main channel thereof, and to the island located about two and one-half miles north of the mouth of
39 the Kaw river at its confluence with the Missouri river and lying west of the main channel in said river; and that title, possession, sovereignty and jurisdiction of the State of Kansas thereto be forever quieted against the State of Missouri and her officers and citizens; and that the State of Missouri and her officers and her citizens be permanently enjoined from disturbing the title, possession, jurisdiction and sovereignty of the state of Kansas therein and thereto; and your orator humbly prays for such other and further relief, preliminary and final, as to the court may seem reasonable and proper and which the facts of the case may require, and for costs of suit.

FRED S. JACKSON,
Attorney-general of Kansas.

C. C. COLEMAN,
Of Counsel.

40 STATE OF KANSAS,
Shawnee County, ss:

Personally came and appeared before me, the undersigned authority in — for said county and state, Fred S. Jackson, who on oath says that he is the attorney-general of the state of Kansas, that he has read the foregoing answer and cross-bill and knows the contents thereof, and that the matters and things therein contained and alleged are true, as therein alleged and stated, to the best of his information and belief.

FRED S. JACKSON.

Subscribed and sworn to before me, this 1st day of April, 1907.
[SEAL.] D. A. VALENTINE,
Clerk of the Supreme Court of the State of Kansas.

(Endorsed:) Supreme Court U. S. October Term, 1906. No. 14, Original. State of Missouri, Complainant, *vs.* State of Kansas. Answer and Cross-Bill of the State of Kansas. Filed April 16, 1907.

41 And afterwards, to wit, on the 22nd day of April, A. D. 1907, the following entry appears of record, viz:

42 No. 14, Original.

STATE OF MISSOURI, Complainant,
vs.
STATE OF KANSAS.

On motion of Mr. N. T. Gentry, of counsel for the complainant, leave is hereby granted to file the answer to the cross-bill and the replication to the answer of the defendant.
April 22, 1907.

43 And afterwards, to wit, on the 23rd day of April, A. D., 1907, the answer of complainant to the cross bill of the defendant and replication to answer of defendant were filed, in the words and figures following, viz:

44 Original, No. 14.

In the Supreme Court of the United States.

STATE OF MISSOURI, Complainant,
vs.
STATE OF KANSAS, Defendant.

Answer to the Cross Bill and Replication to the Answer of the State of Kansas.

Herbert S. Hadley, Attorney-General of the State of Missouri,
N. T. Gentry, Hunter M. Meriwether, of Counsel, for Complainant.

45 In the Supreme Court of the United States. In Equity.

Original, No. 14.

STATE OF MISSOURI, Complainant,
vs.
STATE OF KANSAS, Defendant.

Replication to the Answer of Defendant.

This replicant saving and reserving to itself all and all manner of advantage of exception which may be had and taken to the manifold errors, uncertainties and insufficiencies of the answer of said defendant for replication thereunto saith:

That it doth and will aver, maintain and prove its said bill to be true, certain and sufficient in the law, to be answered unto by the said defendant, and that the answer of the said defendant is very uncertain, evasive and insufficient in law, to be replied unto by this replicant; without that, that any other matter or thing in said answer contained, material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied, is true all which matters and

46 things this replicant is ready, to aver, maintain and prove as this Honorable court shall direct, and humbly prays, as in and by its said bill it hath already prayed.

HERBERT S. HADLEY,
Attorney-General of the State of Missouri.
N. T. GENTRY AND
HUNTER M. MERIWETHER,
Of Counsel.

In the Supreme Court of the United States.

Original No. —.

STATE OF MISSOURI, Complainant,
vs.
STATE OF KANSAS, Defendant.

Answer of the State of Missouri to the Cross Bill of the State of Kansas.

The State of Missouri, now and at all times hereafter saving to herself all manner of benefit of exception, or otherwise, that can or may be had or taken to the many errors, uncertainties and imperfections in said cross bill contained, for answer unto, or so much thereof as this cross-defendant is advised is material or necessary for her to make answer to, says:

First. She reasserts and alleges the truth of all of the allegations in her original bill contained, as fully and completely as if set out in detail in this answer:

Second. She admits that there is an island in the Missouri river about two and one-half miles north of the point where the Kaw or Kansas river enters the Missouri river, and that the jurisdiction and control of the location of said island is in dispute between the cross-complainant, the State of Kansas, and the original complain-
47 ant, the State of Missouri, and she admits that the location of the boundary line between said states at said point is in dispute, and that she denies the state sovereignty and control of the State of Kansas to the aforesaid island;

Third. This cross-defendant admits that the boundary line dividing the states of Missouri and Kansas, north of the confluence of the Kansas river with the Missouri river is, as alleged in the prayer of the State of Kansas in its cross-bill, to wit: beginning at the median line of the main channel of the Missouri river, where the same is intersected by the fortieth parallel of north latitude and follows down the current and median line of the main channel of the Missouri river southerly and southeasterly to a point where the said median line of the main channel of the Missouri river is intersected by a perpendicular erected over the middle of the Kansas river at its confluence with the Missouri river; but this cross-defendant alleges the fact to be that the island in question lays south and east of the boundary as thus described, and is included within the original and the present boundaries of the State of Missouri;

Fourth. This cross-defendant now states, alleges and charges that in addition to the foregoing specific denial she denies all of the allegations of the cross-bill adverse to the matters and claims set up in this answer, and she calls upon the cross-complainant to sustain the allegations of her cross-bill, if they can be proved.

Wherefore, this cross-defendant, having fully answered, confessed, traversed and avoided or denied all the matters in said cross-bill material to be answered, according to her best knowledge and belief, humbly prays this Honorable Court that the said cross-com-
48 plainant's cross-bill may be dismissed and that the original complainant have and recover her reasonable costs.

HERBERT S. HADLEY,
Attorney-General of the State of Missouri,
N. T. GENTRY AND
HUNTER M. MERIWETHER,
Of Counsel.

(Endorsed:) Supreme Court, U. S. October Term, 1906. No. 14, original. State of Missouri, Complainant, *vs.* State of Kansas. Answer of Complainant to cross-bill of defendant and replication to answer of defendant. Filed April 23, 1907.

49 And on the same day, to wit, the 23rd day of April, A. D., 1907, acknowledgment of service of motion for leave to file answer and cross bill and waiver of process on cross bill was filed, in the words and figures following, viz:

50 In the Supreme Court of the United States, October Term, 1906.

No. 14, Original.

THE STATE OF MISSOURI, Complainant,
vs.
THE STATE OF KANSAS, Defendant.

Acknowledgment of Service.

Acknowledgment of service of copy of Motion to file answer and Cross-bill and of service of copy of the Answer and Cross-bill of the defendant in the above entitled action is hereby made this 4th day of April, 1907, and process on said Cross-bill is hereby waived.

HERBERT S. HADLEY,
Attorney-General of Missouri, Solicitor for Complainant.

(Endorsed:) Supreme Court U. S., October Term, 1906. No. 14, Original. The State of Missouri, Complainant, *vs.* The State of Kansas. Acknowledgment of service of motion to file answer and cross-bill, and waiver of process on cross-bill. Filed April 23d, 1907.

51 And on the same day, to wit, the 23rd day of April, A. D., 1907, the motion of complainant for the appointment of commissioners to take testimony and consent thereto were filed, in the words and figures following, viz:

52 Supreme Court of the United States, October Term, 1906.

No. 14, Original.

STATE OF MISSOURI, Complainant,
vs.
STATE OF KANSAS, Defendant.

Now on this day comes the State of Missouri and moves the Honorable Court to appoint Clad Hamilton and Solon T. Gilmore commissioners to take evidence in this cause and to report to this Court.

HERBERT S. HADLEY,
Attorney General.
NORTH T. GENTRY,
Ass't Attorney General of State of Missouri.

On behalf of the State of Kansas we consent to the above motion.

F. S. JACKSON,
Att'y Gen. of Kans.,
Per A. B. BROWNE.

Endorsed: Supreme Court of the United States. October Term, 1906. No. 14 Original. The State of Missouri, Complainant, *vs.* The State of Kansas. Motion of Complainant for appointment of commissioners to take testimony and consent thereto. Filed April 23d, 1907.

53 And on the same day, to wit, the 23rd day of April, A. D., 1907, the following entry appears of record, viz:

54 No. 14, Original.

STATE OF MISSOURI, Complainant,
vs.
STATE OF KANSAS.

Mr. N. T. Gentry, of counsel for the complainant, submitted to the consideration of the court a motion for the appointment of commissioners to take testimony in this cause.
April 23, 1907.

55 And afterwards, to wit, on the 29th day of April, A. D. 1907, the following entry appears of record, viz:

56 Supreme Court of the United States, October Term, 1906.

No. 14, Original.

STATE OF MISSOURI, Complainant,
vs.
STATE OF KANSAS.

On consideration of the motion by counsel for the complainant for the appointment of commissioners to take the testimony in this cause, and the consent of counsel for the defendant thereto,
It is now here ordered by the Court that Clad Hamilton and Solon T. Gilmore, Esquires, be, and they are hereby, appointed as such Commissioners.
April 29, 1907.

Endorsed: Supreme Court of the United States, October Term, 1906, No. 14 Original. Order appointing Commissioners to take testimony. Filed April 29, 1907.

57 And afterwards, to wit, on the 5th day of August, A. D., 1907, the oath of Clad Hamilton as Commissioner, herein, was filed, in the words and figures following, viz:

58 Supreme Court of the United States, October Term, 1906.

No. 14, Original.

STATE OF MISSOURI, Complainant,
vs.
STATE OF KANSAS.

STATE OF KANSAS,
County of Shawnee, ss:

I, Clad Hamilton, Commissioner appointed by the Supreme Court of the United States to take and return the testimony in the cause of *The State of Missouri, Complainant, vs. The State of Kansas,* (No. 14, Original, Oct. Term, 1906) do solemnly swear that I will faithfully and impartially discharge and perform all the duties devolved on me as such Commissioner, according to the best of my ability and understanding. *So help me God.*

CLAD HAMILTON.

Subscribed and sworn to before me this 31st day of July, 1907.
[SEAL.] SARAH HOUSTON,
Notary Public.

My commission expires November 14, 1910.

Endorsed: Supreme Court of the United States, October Term, 1907, No. 6 Original. Oath of Clad Hamilton as Commissioner. Filed August 5, 1907.

59 And afterwards, to wit, on the 23rd day of August, A. D., 1907, the oath of Solan T. Gilmore as Commissioner herein, was filed, in the words and figures following, viz:

60 Supreme Court of the United States, October Term, 1906.

No. 14, Original.

STATE OF MISSOURI, Complainant,
vs.
STATE OF KANSAS.

STATE OF MISSOURI,
County of Jackson, ss:

I, Solon T. Gilmore, Commissioner appointed by the Supreme Court of the United States to take and return the testimony in the cause of *The State of Missouri, Complainant, vs. The State of Kansas,* (No. 14, Original, Oct. Term, 1906,) do solemnly swear that I will faithfully and impartially discharge and perform all the duties de-

volved on me as such Commissioner, according to the best of my ability and understanding. *So help me God.*

[SEAL.] SOLON T. GILMORE.

Subscribed and sworn to before me this 19th day of August, 1907.

[SEAL.] JAMES L. KILROY,
Notary Public, Jackson County, Mo.

My Commission expires June 19, 1911.

Endorsed: Supreme Court of the United States, October Term, 1907, No. 6, Original, State of Missouri, Complainant, *vs.* State of Kansas. Oath of Solon T. Gilmore, Commissioner. Filed August 23rd, 1907.

61 And afterwards, to wit, on the 13th day of October, A. D., 1908, the following entry appears of record, viz:

62 Supreme Court of the United States.

No. 6, Original, Oct. Term, 1908.

STATE OF MISSOURI, Complainant,
vs.
STATE OF KANSAS.

On motion of Mr. C. C. Calhoun, in behalf of counsel, leave is granted to file a stipulation to open, and publish the *the* testimony taken herein, to print the record, and as to the fixing a day for the hearing of the case, the matter of fixing such a day is hereby taken under advisement.

October 13, 1908.

63 And on the same day, to wit, on the 13th day of October, A. D., 1908, a stipulation was filed in the words and figures following viz:

64 In the Supreme Court of the United States, October Term, 1908.

Original, No. 6. In Equity.

STATE OF MISSOURI, Complainant,
vs.
STATE OF KANSAS, Defendant.

Stipulation for order directing testimony to be opened, published and filed; and that the record be printed; and asking the Honorable Court to set the cause for hearing.

Come now here the State of Missouri, complainant, and the State of Kansas, defendant, parties to the above entitled cause, by their re-

spective attorneys, and file this their stipulation agreeing that the Court may direct and issue an order to the effect that:

1st. The testimony filed by the Honorable Commissioners, heretofore appointed, may be opened, published and filed.

2nd. That the Honorable Court make an order directing that the record in the said cause be printed; and

3rd. That the Court order that the said cause be set down for hearing at such time as shall suit the convenience of the Honorable Court.

HERBERT S. HADLEY,
Attorney-General of Missouri, for Complainant.
FRED S. JACKSON,
Attorney-General of Kansas, for Defendant.

HUNTER M. MERIWETHER,
Of Counsel for Complainant.

(Endorsed.) Supreme Court U. S. October Term, 1908. No. 6, Original. State of Missouri, Complainant, *vs.* State of Kansas. Stipulation that testimony be opened, published and filed, that record be printed and that case be set for hearing. Filed October 13, 1908.

65 And on the same day to wit, on the 13th day of October, A. D., 1908, the following entry appears of record, viz:

66 Supreme Court of the United States.

No. 6, Original, Oct. Term, 1908.

STATE OF MISSOURI, Complainant,
vs.
STATE OF KANSAS.

On motion of Mr. C. C. Calhoun in behalf of counsel, It is ordered by the Court that the testimony herein be open, published and filed. October 13, 1908.

67 And on the same day, to wit, the 13th day of October, A. D., 1908, the testimony was filed herein in the words and figures following, viz:

68 In the Supreme Court of the United States.

STATE OF MISSOURI
versus
STATE OF KANSAS.

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Exhibits 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, A–4, A–5, and A–6, are attached at the end of the testimony herein. They consist of maps, field-notes, etc.

71 Supreme Court of the United States.

No. 14, Original, October Term, 1906.

STATE OF MISSOURI, Complainant.
vs.
STATE OF KANSAS.

Notice of the Taking of Testimony.

To the Above Named Complainant and Defendant:

You, and each of you are hereby notified that the undersigned Commissioners, to take testimony in the above entitled cause, will proceed to take testimony in said cause on Saturday, September 14, 1907, at the hour of 10:00 A. M. at Room 515 New York Life Building in Kansas City, Missouri.

Witness our hands this 12th day of September, 1907.

CLAD HAMILTON,
SOLON T. GILMORE,
Commissioners.

Service of the above notice this 13th day of September, 1907, is hereby acknowledged.

HERBERT S. HADLEY AND
RUSH C. LAKE,
Attorneys for Complainant.
FRED S. JACKSON AND
JOHN S. DAWSON,
Attorneys for Defendant.

72 In the Supreme Court of the United States.

STATE OF MISSOURI, Complainant.
vs.
STATE OF KANSAS, Defendant.

Præcipe for Subpœna.

To the Honorable Commissioners in the above entitled Cause:

Please issue subpœna for the following witnesses to testify in behalf of the defendant before your Honors at the hearing on said cause on Friday, December 6, 1907, towit:

Dudley Pullen, resides in shanty on East bank of Kaw river immediately north of Electric Light Power House, Central avenue and Kaw river, Kansas City Kansas.
Thos. J. Barker, Sr., 6th St. & Quindaro Bvd. Kans. City, Kas.
John A. Hale, Att'y at Law, 7th & Minn ave., do
George Schreiner, 442 North Fourth street, do
Frank P. Sebree, Att'y at Law, Kansas City, Mo.

F. S. JACKSON,
Att'y Gen'l of Kansas.
JOHN S. DAWSON,
Ass't Att'y Gen'l of Kansas,
By W. H. McCAMISH AND
W. H. McCAMISH,
Of Counsel, Attorneys for the State of Kansas.

NOTE.—I am advised by the Hon. John S. Dawson, that the sheriffs of the respective counties of Wyandotte and Jackson are the proper parties to make service, in the absence of a U. S. Marshal.

73 *Subpœna.*

To W. Pullen, Thomas J. Barker, John A. Hale, George Schreiner, Frank P. Sebree:

You and each of you are hereby commanded, all excuses and delays set aside, that you be and appear before the undersigned commissioners to take testimony at Room 601, Kansas City Life Building, Kansas City, Missouri, on Friday, December 6, 1907, at the hour of ten o'clock, A. M. then and there to testify and the truth of your knowledge to speak in a certain cause now pending in the Supreme Court of the United States, in which the State of Missouri is complainant, and the State of Kansas is defendant, on the part of the defendant; and this you shall in no wise omit under legal penalty.

Witness our hands and seals this 5th day of December, 1907.

CLAD HAMILTON, [SEAL.]
SOLON T. GILMORE, [SEAL.]
Commissioners to Take Testimony.

74 Supreme Court of the United States.

No. 14, Original, October Term, 1906.

STATE OF MISSOURI, Complainant,
vs.
STATE OF KANSAS.

To the honorable the judges of the Supreme Court of the United States:

We, Clad Hamilton and Solon T. Gilmore, commissioners named under and by an order of the said court made on the 29th day of April, 1907, do hereby respectfully report to the court that pursuant to notice served upon the attorneys of record of each of the parties hereto, we were attended by Rush C. Lake, Assistant Attorney General, Alfred Gregory and Hunter M. Meriwether, Esquires, Counsel for the State of Missouri, and by John S. Dawson, Assistant Attorney General, Counsel for the State of Kansas, upon the 14th day of September, 1907, and by consent of counsel for the respective parties it was agreed that said testimony might be taken down by a stenographer obtained by us for that purpose, in the presence of witnesses and from their statements and that the said stenographic notes might afterwards be reduced to writing by the typewriter, the signatures of the witnesses to the same being waived by consent of counsel for the respective parties. Thereupon the following proceedings were had:

Counsel for plaintiff being unready to begin the introduction of testimony, the taking of testimony was by agreement of the parties adjourned to the 18th day of October, 1907.

75 On this the 18th day of October, pursuant to adjournment and by consent of both the parties, the taking of testimony in this cause was commenced, Complainant appearing by Rush C. Lake, Assistant-Attorney General, Alfred Gregory and Hunter M. Meriwether, Esqs., and the defendant appearing by John S. Dawson, Assistant Attorney-General, and W. H. McCamish, Esq.

Thereupon the following proceedings were had:

Statement on Behalf of Complainant, By Mr. Meriwether.

May it please the Commissioners, This controversy relates to a difference between two States—Missouri and Kansas—as to the location of the line between those States, just north of the present Missouri river at Kansas City.

When Missouri was originally surveyed, in accordance with the act under which that territory was created, its western boundary was to be a meridian line run through the middle of the mouth of the Kansas river—that is, a line due north and south, run through the middle of the mouth of the Kansas river, at the point at which it empties into the Missouri. That line was surveyed by two surveyors—the surveyor who brought the line up from the south to the middle of the mouth of the Kansas river,—surveyed earlier than,

I believe, the surveyor who surveyed north of the line—north of the Missouri river—I forget his name,—who brought it up from the south. At any rate, owing to the way in which the Missouri river comes down at that point—running almost due north, it was
76 impracticable to continue that line and mark it as originally intended, as a straight line—so that you will find, according to the survey of the west line of this State, there is an off-set, running about 1300 feet east of the line as brought from the south of the river, on down south. Now, there is a little error on that map, on that point—instead of the offset being shown east, it is indicated there to the west, and that I wish to call attention to.

Commissioner GILMORE: Which line is wrong?

Mr. GREGORY: The line extending south is too far east on this map—it ought to be west of the line coming down from the north. (Referring to the line extending south from the Missouri River on the map in Complainant's bill.

(Mr. MERIWEATHER:) Yes, sir. In other words, if the line were carried forward in accordance with the original act admitting Missouri, and forming Missouri Territory, it would be 1320 feet farther west than it was surveyed, as a matter of fact. Now, there is no contention here that that line ought to be 1320 feet west of the Sullivan line. We do not intend to contend that, although the act admitting Missouri, might admit of such a contention; but, what we do contend for is the line as run by Sullivan and marked and monumented as the true western boundary line of the State. It was established as the true western boundary line of the State, without reference to his crossing the river, or without any reference to the river whatever.

Now, we will admit, as a proposition of law, that has been established by repeated decisions of the United States Supreme Court, that, where the boundary line between two states is established as the thread of a river, that that boundary line changes with the river, where the changes are the ordinary changes that take place by erosion and accretion. That will be admitted as a proposition
77 of law, and not disputed, I believe, at all. But that proposition is subject, as you will learn, to numerous modifications. One is, where the change is made so rapidly that the boundary line does not change. Another is where there is a cut-off, the boundary line does not change. On this proposition of law of the changes of boundaries, the courts are extremely particular and jealous that there shall not be any change of an established boundary line unless there is some absolute necessity for such a change.

Now, the land in question is every bit east of the line which was established and run as the west boundary of Missouri, That is admitted in the pleadings here. The proposition then comes down to this question—here is land which was in Missouri, and the evidence will show that it was sold, platted and deeded as Missouri land. It was not bounded at the time it was so patented, deeded and occupied as Missouri land, by any river at all, but by a definite straight line.

A proposition of law which we will contend for, without any reference to the facts whatever, is, that this land, established as Missouri land and occupied as Missouri land, and deeded up to a definite straight line, has its position established and cannot be incidentally

changed from Missouri into Kansas by reason of any subsequent legislation or enactment without the consent of the owners of those particular tracts of land.

Now, that condition of affairs, the line remaining as a definite straight line, existed from the time of the survey in 1819 up until 1837, without any question whatever. In 1837, there was a change in certain conditions near that point and the whole controversy here comes from the fact that in this curve of the river, which makes two right-angle curves at that point, there was no very de-
78 finite location of where those changes extended to. That is the whole controversy here. The river comes from the west, towards the east, at a certain point, then changes to the south, and then again changes to the east. In those State line changes which took place by reason of the Platte Purchase, in 1837, the points were not very particularly marked as to where those changes began and ended. Then, you will come to the proposition of law as to what was the effect of the Platte Purchase in changing the line of the western boundary of Missouri. The Platte Purchase was a purchase of that tract of land lying between the Missouri river and the western boundary of Missouri. It was Indian land—belonged to a number of tribes of Indians. And Missouri, by its legislature, petitioned Congress to purchase the land lying between its western boundary and the river, and add it to the State of Missouri. That was done; and, on the 27th of March, 1837, I believe it was, a proclamation was issued, in due course, adding that territory to Missouri, and extending the line of Missouri from its former position so as to cover the lands added to Missouri.

Now, you will find there is no act changing the western boundary of Missouri at all, except by implication. None of those enactments said thereafter the western boundary of Missouri shall be thus and so, running down to a definite line. But, by implication and purchase of certain lands lying between the western boundary of Missouri and the Missouri river, the line was, at certain points, unquestionably changed to carry it over and include those lands within Missouri. There was no pretense to change it anywhere else, certainly.

We come, then, to this question of fact, which, I believe, is the only question of fact in the case at all—that is, How far south did that land extend which was purchased and added onto
79 Missouri. If it did not extend as far south as the land opposite the land we are now seeking to have you conclude to be in Missouri then there is no question whatever that the line there has remained the state line of Missouri, straight, without any change at all. Then, we will attempt to show, by our evidence—and I think we will show to the absolute satisfaction of this Commission, that there was not a particle of land purchased and added to Missouri at any point opposite the point we are contending for now as being in Missouri.

Referring to these maps which we will introduce in evidence, in order that the Commissioners may understand—we will have a certified copy of this map—this is a copy, but we will introduce a certified copy.

This is the first survey made since the Platte Purchase was com-

pleted. A survey was ordered of the territory which had not previously been surveyed, and this is that section which extends to the southern part of the Platte Purchase. It goes to there, and there on the river. This is the Platte Purchase over here, on up, extending out to the river, but there is nothing, you see, south of that at all. This survey was completed, as shown by the certificate, in December 1839, just about 2 years after the Platte Purchase was made, and the notes will show the river at that point crossed this original boundary of Missouri, and ran in a southeast direction. If this survey, then, represents the conditions as they existed in 1837, there could be no question whatever this line, as extended on south, was not in any way altered. That is what we will contend to be the case.

I do not know that we will introduce any oral testimony. It may be necessary to have one witness, to explain some lines, but the oral testimony will be very brief, indeed. We will depend largely upon records,—this survey and other surveys, as indicating the position which we will attempt to maintain.

80 Mr. DAWSON: We would like to reserve the making of our statement, for the present, if the Commissioners will permit that, because we have never had a chance to get together and consult on just what line of defense we have.

Commissioner GILMORE: That will be all right.

Thereupon the plaintiff, to sustain the issues on its part, offered and introduced oral and documentary evidence as follows: towit:

Mr. GREGORY: The State of Missouri offers in evidence a certified copy of the plat of Township No. 50, North of the base line, Range 33 West of the Fifth Principal meridian, showing the survey of Charles Powell in June, 1819, said plat being duly certified by the Secretary of State of Missouri.

(The said plat was then marked "Exhibit 1," and is attached to this record.)

Mr. GREGORY: We desire to introduce certified copy of the surveyor's notes of the John C. Sullivan Survey, made during the month of September, 1816.

Mr. DAWSON: To which, the defendant objects, for the reason that this certificate of the Secretary of State of Missouri does not show where the field-notes mentioned in the certificate are to be found in the files of any public office anywhere.

Commissioner HAMILTON: So far as I am personally concerned, acting in this capacity, I think unless it is clear that it should not be admitted, that it is the duty of the Commissioners to

81 let in evidence simply on the ground if the case goes to the Supreme Court, and anything is shut out entirely, they cannot pass on it, if the Court should take a different view from the Commissioners, on the subject, and the evidence should be out entirely—I think we ought to be extremely liberal in letting in evidence.

Commissioner GILMORE: That is my view, also. We will let it in, and the Supreme Court may throw it out if it wants to.

(The said field notes were then marked Exhibit 2, and are attached to and made a part of this record.)

Mr. Gregory then read portions of the field notes for the information of the Commissioners.)

Mr. DAWSON: We will withdraw our objection. It shows at the end it appears of record.

Mr. GREGORY: We offer in evidence the notes of the survey—of the Charles Powell Survey, made in the month of June, 1819—which affects 3 miles of the boundary line.

(The said notes were then marked Exhibit 3, and are attached to a- made part of this record.)

(Mr. Gregory read same aloud.)

Mr. GREGORY: We next offer in evidence certified copy of Township No. 50, north of the base-line, Range No. 33 West of the Fifth Principal Meridian, being the survey of Lisbon Applegate in April, 1840, which may be marked Exhibit 4.

The said document was then marked Exhibit 4, and is attached to and made a part of this record.

Mr. GREGORY: I will read the statement of Silas Reed, as appended to this plat. (Reads same to Commissioners.)

82 Mr. GREGORY: We next offer a certified copy of the field notes of the Lisbon Applegate Survey, a plat of which has just been introduced.

The said field notes were then marked Exhibit 5, and are attached to and made a part of this record.

Mr. GREGORY: We next offer in evidence a certified copy of a plat of the survey of Township 50, north of the base-line, Range 33 West of the Fifth Principal Meridian Survey of John Lampton, Deputy United States Surveyor, made in the month of December, 1846, so far as the same pertains to the old western or Indian boundary line of the State of Missouri, as the same appears of record at page 67 of Township Plat Book 48, Missouri Surveys,—which may be marked Exhibit 6.

Then said plat was then marked Exhibit 6, and is attached to and made a part of this record.

Mr. GREGORY: We next introduce field notes of the old Western or Indian Boundary line, as surveyed by John Lampton, Deputy United States Surveyor, in the month of December, 1846, relating to the plat just introduced.

Noon adjournment.

83 F. W. TUTTLE, a witness, of lawful age, produced, sworn and examined on the part of the, *on the part of the* State of Missouri, testified as follows:

Direct examination, by Mr. GREGORY:

Q. State your name and place of residence.

A. F. W. Tuttle, Kansas City, Missouri.

Q. What is your business?

A. Surveyor.

Q. How long have you been in that business in Kansas City, Missouri?

A. 22 years.

Q. And, of what firm are you a member?

A. Tuttle & Pike.

Q. How long has that firm been in existence?

A. Organized in 1885.

Q. You may take the large map, if you please, which I will ask the stenographer to mark Exhibit 8, and I will ask you what that map represents.

A. That is a map of Kansas City and vicinity, which we made for exhibition at the World's Fair in St. Louis, in 1904.

Q. I will ask you to look at that map.

A. This is a reproduction of the original, which was to a much larger scale.

Q. I will ask you whether that map is correct, and made according to the accurate surveys?

Mr. DAWSON: Objected to as incompetent, irrelevant, immaterial, and calling for a conclusion of the witness.

Objection overruled and excepted to.

A. It is a correct map, based on public records and private records in our office, based on surveys covering the last 22 years.

Q. Was the map made under your personal supervision?

A. Yes, sir.

Mr. GREGORY: We offer that map in evidence.

Mr. DAWSON: To which defendant objects, as incompetent, irrelevant, immaterial, not a public record, and not a file of any public record.

84 The Commissioners thereupon announced that they would withhold their ruling for the present.

(The said map was then marked Exhibit 8, and is attached to and made a part of this witness's testimony.)

Commissioner HAMILTON:

Q. By whom were you employed to make the map?

A. We were really employed by a committee of three, representing the Missouri Commission. The committee consisted of A. A. Whipple, R. L. Winter and E. H. Allen.

Q. It was not made for any of the municipal authorities of Kansas City?

A. It was really made as a Kansas City exhibit, to be shown in the Casino at the World's Fair.

Q. Were you an officer of the City or State at the time you made it?

A. No, sir.

Q. Is there any official map of Kansas City, made by any officer of the City or of the State?

A. None I am aware of.

Commissioner HAMILTON: Objection overruled, and exception allowed to the ruling.

(By Mr. GREGORY:)

Q. What does that line running between points "A" and "B" indicate, Mr. Tuttle?

A. That is the southerly prolongation of the line between Platte and Clay counties, Missouri.

Q. What is the line from "C" to "E"?

A. That is the western boundary line of Jackson county, Missouri, and the eastern boundary line of Wyandotte county, Kansas.

Q. Do you know whether the line A to B represents the original Indian boundary line known as the "Sullivan line"?

Mr. DAWSON: Objected to as incompetent, irrelevant, immaterial, and calling for a conclusion of the witness, no facts having been shown that the witness knows anything about that line.

Mr. GREGORY: I asked him if he knew it?

85 A. I am not clear on that point. I am not thoroughly familiar with that Sullivan line.

Q. But, if the present line between Platte county and Clay county, Missouri, north of the point A, is the ancient Indian boundary Sullivan line, then the line A to B would be a prolongation of the same line?

A. That is true.

Q. I call your attention to the island which is marked "Goose Island," and ask you in what section, or sections, that lies, as shown by this map?

Q. It lies in section 15, township 50, range 33, Clay County, Missouri.

Mr. DAWSON: Defendant moves to strike out the answer of the witness, for the reason that it is a conclusion, it not having been established whether that line is in Missouri or Kansas; consequently, it is a conclusion that it is defined as that section and township and range, rather than some township, section and range according to the numbering in Kansas.

Motion to strike out overruled, and excepted to.

Q. Mr. Tuttle, these numbers upon the map—27, 34, 10, 14, 27, what do they indicate,—what points?

Q. They indicate the centers of the sections, corresponding to the numbers.

Mr. GREGORY: We offer in evidence the certified copy of a map of township No. 10, south of range 25 east of the Sixth principal Meridian, Kansas Territory, certified by H. W. Sanford, Recorder General Land Office of Wyndotte county, on October 8th, 1907, and ask the stenographer to mark it Exhibit 9.

Commissioner HAMILTON: That is not objected to. It goes in evidence.

Mr. DAWSON: No objection to that.

86 (The said certified copy of map was then marked Exhibit 9, as requested, and is attached to and made a part of this witness' testimony.)

Q. Mr. Tuttle, I hand you this blue-print, which is supposed to be,—and is practically the same, on a different scale,—as the map just introduced in evidence, and will ask you whether, upon that plat, you have indicated where the prolongation southward of the line between Platte and Clay counties would be, if shown upon that map?

Mr. DAWSON: Objected to as incompetent, irrelevant, and immaterial. And for the further reason, that this plat that is now under discussion, has not been properly identified in connection with any public office, or shown to be a file, or a certified copy of the files of any public office.

A. I have.

Mr. GREGORY: We take it for granted the Commissioners can see with their eyes it is the same map.

Commissioner HAMILTON: What is the object of introducing it?

Mr. GREGORY: To get Mr. Tuttle's identification of the Indian boundary line, to show where it would come on this map.

Mr. DAWSON: We object to that, for the reason that the witness has already testified that he is not very sure where the Indian boundary line is.

Commissioner GILMORE: You can assume it is the same, and then indicate where the line would come.

Mr. GREGORY: We offer this blue-print in evidence, and ask that it be identified as Exhibit 10, for the purpose of showing the location of the Indian boundary line, or the prolongation southward of the line between Platte and Clay counties with reference to center of section 27, which appears upon the map offered as Exhibit 9.

87

We make this offer upon the basis that it can be seen by the Commissioners themselves that the map itself is practically identical with Exhibit 9; and that, therefore, the showing of the boundary line, as indicated by Mr. Tuttle, would show with sufficient accuracy where that line would run. Also, with a view that, if the Commissioners object, and think the evidence is not sufficient, we will secure a duplicate of Exhibit 9, and upon that have Mr. Tuttle indicate the Indian boundary line.

Mr. DAWSON: I do not know how many different objections there are, in point of law, as to that method of procedure, but defendant will admit this Exhibit 10 for the purpose only of using the same for reference to the Sullivan survey line; and, as to all other matters, it is incompetent, irrelevant and immaterial, and not the best evidence.

The COMMISSIONERS: It will be admitted, under those circumstances. That is all you desire to use it for?

Mr. GREGORY: Yes, sir.

Q. I will ask you what the line between the points A and B indicates upon this map which is marked Exhibit 10?

A. It indicates the southerly prolongation of the line between Platte and Clay counties, Missouri.

Cross-examination by Mr. DAWSON:

Q. Mr. Tuttle, who made that line from A to B, on Exhibit 10?

A. I did.

Q. When did you make that?

A. Within the last 48 hours—either yesterday or the day before.

88 Q. Did you have some official record that you examined, to make this copy?

A. That conforms to the location of the State Line on the large map, Exhibit 8.

Q. You say it does conform to it?

A. Yes, sir.

Q. And this line, from A to B, on Exhibit 10, has been made by you with reference and comparison to the line A B B, on Exhibit A?

A. Yes, sir.

Q. Recurring again to map Exhibit 8, this is not the original map?

A. A photographic copy of it.

Q. A photographic copy of it?

A. Yes, sir.

Q. Was the original map made from field notes?

A. To a large extent, it was, yes, sir.

Q. To a large extent.

A. This map shows buildings, and many things of that kind, taken from other sources.

Q. What was the particular object in producing the map (Ex. 8) in the first instance?

A. I suppose it was to give the people that attended the World's Fair, at St. Lonis, an adequate conception of the importance of Kansas City.

Q. And the drawings, in relation to the Missouri River north of the confluence with the Kaw river, was merely secondary and incidental to the main purpose of making the map?

A. The entire map was made with care, and is quite as accurate to the border lines as it is in the center of the city.

Q. And here, this part of the map, from the confluence of the Kaw river with the Missouri river, northward, was not the main purpose in producing the map for the World's Fair, was it? Answer it Yes or No.

A. I must say no, if you ask it that way.

Q. Did you make the original of this map yourself?

A. There were, perhaps, fifteen people employed on it. I was in personal charge of the work.

89 Q. And there may be mistakes in this map, made by some one or more of these 15 people?

A. Certainly.

Q. I will ask you, Mr. Tuttle, if, in the preparation of the original of this map, you consulted with Mr. H. M. Merriwether?

A. I do not remember to have ever done so.

Q. How long have you known Mr. Merriwether?

A. Twenty years, I imagine.

Q. You have done a good deal of business for him?

A. Yes, sir.

Q. Have you consulted his maps in the making of yours?

A. In making this map (Ex. 8)?

Q. Yes.

A. I do not recollect doing so.

Q. You do not recollect?

A. No, sir. We used what information we had in the office. We had made many surveys for Mr. Merriwether, along the river: I suppose those maps were used and given the same weight as the other information in the office, in the preparation of this map.

Q. And Mr. Merriwether's maps would be given the same weight as any other maps and records which you examined, in the making of this?

A. If we examined and used any maps of Mr. Merriwether's, they were maps we ourselves had made for him.

Q. I will ask you if you consulted the maps on file in Clay and Platte county, Missouri, before you made this map?

A. We have in the office, and used, in the preparation of this map, copies of the original Government surveys in Clay and Platte counties, Missouri, as well as in Jackson county, Missouri, and Wyandotte county, Kansas,—all those were used by us, as well as maps and surveys made by our firm in all four of the counties, and all the sources of information we found it necessary to accumulate for the preparation of this large map.

Q. You did not confine your examination merely to the records in the public offices of these four counties which you mention, but included information from outside sources?

90 A. That is true as to some features of the map, particularly buildings. The buildings shown were largely taken from fire insurance maps. The principal lines of the maps, and section lines, township and range lines, of course, were taken from the Government records. The details, showing various improvements, were taken from fire insurance maps. The railways shown were taken from maps furnished by the railway companies.

Q. From what official record, if any, was this line from C to B taken,—in the middle of the Missouri river?

A. I do not know what that line C-B means. The line connecting D and C is the center of the channel of the river, as it existed in 1904, and the line connecting D and B is the southerly prolongation of the line between Platte and Clay counties. Why B and C are connected there, I cannot at this moment tell you, sir.

Q. Then, this line from B to D is a mere prolongation of some other l

A. The line from D to B is in the southerly prolongation of the line between Platte and Clay counties, Missouri, yes, sir.

Q. It has no other significance than that of a line of prolongation, has it?

A. Not to my mind.

Q. Do you know why the line of prolongation is extended to B instead of to the river bank, north of B?

A. It appears to me, from an examination of the map, after this long period, that the point C, on the line between Missouri and Kansas, south of the river, was made the north end of the southern portion of this State boundary line, because it happened to fall in the center of the Missouri river, and that we must have connected

that point by an east and west line, with the southerly prolongation of the line from the north.

Q. That is your conclusion?

A. I am not clear on the point, no, but it seems to me that is what we did, from the appearance of this map.

91 Q. Then, if you should be mistaken in the idea that C, in the middle of the Missouri river,—or near the middle of the Missouri river,—is not the north point of the boundary line of the south half of the States of Kansas and Missouri, then your conclusion would be erroneous, wouldn't it?

(Question read by reporter.)

A. Yes, I am not at all clear as to the proper connection between the line produced from the south and the line produced south from the north. I just know that C-E is the boundary line of the two States, produced from the south, and that A-B is the boundary line between Platte and Clay counties, produced from the north, and this connection between the south and north ends of them, I cannot wholly account for it to my own satisfaction. The matter is three or four years old, and I have not considered it from then until now.

Redirect examination by Mr. GREGORY:

Q. I will ask you, Mr. Tuttle, whether there is any monument upon the point of land lying between the points B and D, on the prolongation line, which shows the old original Indian boundary line known as the "Sullivan Line?" Monument of reference.

A. I have in my office a blue-print copy of a map, showing the results of a joint survey by the County Surveyor of Platte county and the County Surveyor of Clay county, made some years ago, in which they together located that line and monumented it at a number of points, extending several miles north from the point indicated as point "A" on this map. That map shows the position of these monuments and the references to them; and that map shows a monument, with references to it, on that line produced south to this point near B. We have made a number of surveys on that point, and my assistants have used this monument as marking that

92 line, as their notes shows, which I have examined. I have never personally seen that monument.

Mr. DAWSON: Defendant moves to strike out the answer of the witness, for the reason it is not a response to the question, and for the further reason that the answer itself shows there is other and better evidence.

Commissioner GILMORE: The Commissioners are of the opinion that the objection is well taken, but in conformity with our policy in this matter, we will overrule the motion to strike out, allow you an exception, and let the Supreme Court pass upon the whole matter.

Mr. GREGORY: We shall ask leave to further identify the monument, if there be such, either by Mr. Tuttle or some other engineer, at a later day.

Q. Mr. Tuttle, you spoke of being in personal charge of the making of this map which has been marked Exhibit 8,—you may state

what you did in supervising the making of it—to what extent did you supervise it and see whether or not it was correct?

A. The map was made in an office in the same block as our offices, by a draughtsman specially employed for this particular job. Our chief draughtsman, Mr. Gabelman, was detailed to have direct and continuous charge of the work. I visited the office every day, I think, during the progress of the map,—sometimes two or three times a day,—and conferred with Mr. Gabelman as to the work to be done, and furnished to him the information to be used in the preparation of the map. I was in touch with the work all the time, from the day the map was started until finally shipped to St. Louis.

Q. Is there any mark upon this map which shows the line between Platte and Clay counties, north of the Missouri river, as shown there?

93 A. There is a short black line, north and south, which appears to be the west boundary line of section 10, which I assume to be on the line in question. It shows very little north of the river at that point.

Q. I will ask you to examine the map more closely, and state whether or not you think you are correct when you say that the short black line, at point F, is the west boundary line of section 10.

A. It is quite plain, on more careful examination, it is not, if 10 is a full section.

Q. Mr. Tuttle, can you tell, from this map and the scale to which it is drawn, what the distance is between the letters C and B?

A. It is about 1320 feet, by scale, and as I know it to be from other sources.

Recross-examination by Mr. DAWSON:

Q. Mr. Tuttle, I will ask you to look at this map again, at "Goose Island," and ask you if you know what county in Missouri lies directly east of Goose Island?

Mr. GREGORY: We object to that, because that is asking him for a conclusion of law. I do not know what his answer would be, and what he would say as to that cannot have any weight—it would be a conclusion of law.

Com'r GILMORE: I think I would be competent to testify as to what county is just north of here. Objection overruled, and excepted to.

(Question read by reporter.)

A. I think it would be Clay county.

Q. What county lies north of the Missouri, in the northwestern corner of the map?

A. Platte county, Missouri.

Q. I will ask you, now, Mr. Tuttle, to look again at this map, and tell me what is meant by this line in the middle of the river,

94 coming up towards Harlem, with Kansas City on the south?

A. That line represents the boundary line between Jackson county, Missouri, and Clay county, Missouri.

Q. I will ask you now, Mr. Tuttle, to look at the northwestern part

of the map, and ask what this black line is, in the middle of the Missouri river, in that part of the map?

A. That represents the boundary line between the State of Missouri and the State of Kansas.

Q. That line has been made by an examination of the records and statutes of Missouri and Kansas, has it?

A. I do not know, personally.

Q. Has this line, down the Missouri, coming up the river towards Harlem and Kansas City, been made from the public records and statutes of the Counties of Clay and Jackson, in Missouri, has it?

A. I do not believe I will attempt to say that the limits of Jackson county come in the center of the river, or stop at the south bank. The same with Clay county.

Q. In making maps of this character, didn't you examine carefully the public records and statutes defining the boundaries?

A. We did not read any statutes in connection with the preparation of this map.

Q. And do not generally need the statutes to learn what the county boundaries are, do you?

A. We called upon the public maps for county boundary lines, as a rule, in our work, but I do not remember a case where it was necessary to refer to the statutes.

Q. So that this map, then, is a copy of earlier maps, on file in the public offices of the several counties involved herein, is that correct?

A. We had and used, in the preparation of this map, the
95 United States township maps, for the entire territory covered, and they were used in connection with other information, in the preparation of it; earlier maps were used also.

Q. I will ask you, then, Mr. Tuttle, from what official map, if any, did you copy, or have copied, this line from A to B?

A. I do not think we had any map showing that line from A to B.

Q. What suggested to you to draw the line from A to B?

A. I think the fact that it was the prolongation of the boundary line between Platte and Clay counties. I am not sure whether we had what you refer to as the "Sullivan Line" or map, in the office at the time or not. All I know is that line is a prolongation of the line between Platte and Clay counties.

Q. Note again the line in the middle of the Missouri, coming down from the north (Yes), to the point A, I will ask you why you did not continue that line down the middle of the main channel of the Missouri River, as you have done elsewhere?

A. I do not remember just what controlled.

Q. What is the significance of the line from C to B?

A. It follows the center of the channel of the Missouri river, from the point C to where it intersects the line A-B,—where it was stopped.

Q. Is there any particular reasons for having the line C-B stop at the point B,—that you know of?

A. We did stop at there, as a matter of fact. I think, of course understand, in the preparation of this map, we could not undertake to settle the division of this State Line.

Q. And so, in the drawing of this map, and in the making of the line A-D-B, you had no intention of attempting to indicate the boundary line between Kansas and Missouri, did you?

A. It represents the boundary line as we believed it to be, and it is shown in the same conventional way, as a State line, that the line is between Missouri and Kansas, south of the river, and between
96 Missouri and Kansas to the west. It was what we supposed to be the State Line.

Mr. DAWSON: Defendant objects to the answer of the witness, and moves to strike it out as not responsive to the question.

(Question and answer read by reporter.)

Motion overruled. Exception.

Q. Upon what information did you base your conclusion that the line A-D-B was the boundary line between Kansas and Missouri?

A. I cannot give you a very satisfactory answer to that question, but——

Mr. DAWSON: That is all.

Mr. GREGORY: We ask that the witness be allowed to finish his answer.

Mr. DAWSON: Certainly.

A. I have understood, for a number of years, that the prolongation south of the line between Clay and Platte——

COMMISSIONERS: That is not responsive.

The WITNESS: That is the general impression in my mind.

Com'r HAMILTON: The question is, from what you got your information.

Mr. GREGORY: Would it not be material, in view of their allegations, made in the Answer of the State of Kansas here, that this line has been commonly known,—their allegation has been that the middle or meridian line of the channel of the Missouri river was the lines between the State of Kansas and the State of Missouri. If there is any witness that could be obtained anywhere who would have as good sources of information as a map-maker,—professional engineer,—who has been occupied in this territory for 22 years, in knowing what the common understanding was, I think he would be hard to find. In view of the contention of the State of Kansas that
97 that has been known as the line, are we not entitled to such evidence as this, which is the common understanding of a man whose business it is to inquire about all these lines,—whose business it is to know them? If you are going to admit that class of testimony at all, then this testimony would be good.

Mr. DAWSON: In answer to that, the witness has testified he does not know where he got his information, so this will not be competent. Furthermore, I am inclined to think that evidence of any character to dispute the recitals of a positive statute of the State of Missouri, could be incompetent.

Mr. GREGORY: That is your own theory, set forth in your answer.

Com'r HAMILTON: This witness is asked what is the source of his authority, or, where did he get his information. When he says he

had a general impression, that way, I do not think it is an answer to it. If that is all he has, that would hardly give the source of his information. If you want to go into that impression, I do not know but what that is proper enough. We are disposed to let in evidence, with great liberality, but, at the same time, this is a direct question, and, if Mr. Tuttle has some information, he ought to state it, but, if not, it simply makes the record clearer by stating he hasn't it.

The WITNESS: This matter is cold. I did not know what I was to be asked about when I came here.

Mr. GREGORY: We will not pursue that line further at the present moment.

Witness excused.

98 Mr. GREGORY: If the Court please, that is all of the evidence we have at hand at the present time, with the exception of the notes of the Survey, Exhibit 9 by number, showing portions of Wyandotte county. We will also put in further testimony along the same line as that offered to-day, to further identify the method in which this line A-B was drawn upon this map known as Exhibit 8. There may be some other evidence we will be able to get we would like to put in later; if we get it, I suppose we will not be concluded by the fact that we rest now.

The COMMISSIONERS: No.

Thereupon the further hearing of testimony herein was, by the Commissioners, adjourned to November 1st, 1907, at the hour of 10 A. M., then to be resumed at the office of Brown, Adams & Brown, Shorthand Reporters, 618 Kansas City Life Building, 806 Grand Avenue, Kansas City, Jackson County, Missouri.

99 Now, on this first day of November, 1907, the taking of testimony herein was resumed at Room 618 Kansas City Life Building, pursuant to adjournment as above noted, Complainant being represented as heretofore, and the defendant being represented by same counsel as heretofore.

Mr. GREGORY: We desire to recall Mr. Tuttle.

F. W. TUTTLE, a witness, of lawful age, produced and examined for further examination on the part of the Complainant, testified as follows:

Direct examination by Mr. GREGORY:

Q. Mr. Tuttle, I will call your attention to the map previously introduced, marked Exhibit 8, and ask you whether you have examined your records with reference to original witness trees or monuments upon any portion of the line described here as A-B—if so, what you ascertained?

A. I find in my office a map made in 1898, by the County Surveyor of Clay County, Missouri, and of Platte county, Missouri, showing the location made by them, jointly, of that line, and showing certain monuments which they set to mark it.

Mr. DAWSON: Defendant objects to the answer of the witness, for the reason it develops the fact that there is better evidence than that now before the Court, in regard to these maps.

Commissioner GILMORE: The motion to strike out is overruled, and exception allowed.

Q. Was the map which is shown here as Exhibit 8, with reference to the line A-B, drawn pursuant to former surveys which you have in your office?

100 Mr. DAWSON: Objected to on behalf of defendant, as incompetent, irrelevant and immaterial, as it shows on its face, the question is not making any inquiry as to the records of any public office.

Same ruling. Exception to ruling.

A. That line A-B is the west boundary line of Township 50, Range 33, in Clay county, Missouri, as shown on the map of said Township prepared in the office of the Surveyor-General, a copy of which we have in our office.

Mr. DAWSON: Defendant moves to strike out the answer, because it is not a response to the question, and is incompetent, irrelevant and immaterial.

(Question and answer read.)

Same ruling.

Q. I will call your attention to map already introduced in evidence called Exhibit 6, and ask you whether you recognize it as the map to which you refer?

A. That is a copy of the map to which I refer.

Q. You say you have a certified copy of this same map in your office, and you used it as a reference in drawing line A-B?

A. I have a copy. It is a certified copy made by us of the certified copy on file in Liberty, Missouri.

Mr. DAWSON: Defendant moves to strike out the answer of the witness, because not responsive to the question, because it is incompetent, irrelevant and immaterial, and is an absolute admission that Exhibit 8 is drawn from a copy of a copy.

Mr. GREGORY: We could put in the copy, but it is identical. If Mr. Tuttles testifies it is the same thing, there is no use to incumber the record by putting in different copies of the same map.

101 The COMMISSIONERS: Same ruling as heretofore. Exception.

Q. Have you compared the copy which you refer to as being in your office, with the map which is shown here as Exhibit 6?

A. Yes.

Q. So as to know whether it is the same map?

Mr. DAWSON: Objected to as incompetent, irrelevant and immaterial.

Same ruling. Exception allowed.

A. Yes, sir.

Q. State whether or not it is the same map?

Same objection. Same ruling. Exception.

A. It is a copy of the map.

Q. It is a true map?

Same objection. Same ruling. Exception.

A. Yes, sir.

Q. You may state whether or not the line A-B, on Exhibit 8, is the same as the line shown upon Exhibit 6, which is marked as the former west boundary of Missouri, as surveyed in 1816?

Mr. DAWSON: Objected to as incompetent, irrelevant and immaterial, and calling for a conclusion of the witness.

Same ruling. Exception allowed.

A. It is the same mark.

Q. Mr. Tuttle, a question was asked the other day, whether you had had any conversation with Mr. Merriwether, concerning the drawing or location of any of these lines upon Exhibit 8, which are marked A-B, D-C, and C-E, and you stated you had not—have you anything further to state as to any consultation had by either you or your chief draughtsman, Mr. Gabelman, with Mr. Merri-
102 wether, at the time you prepared this map in 1904?

Mr. DAWSON: Defendant objects to the question, so far as it relates to any discussion with the chief draughtsman, as being hearsay, incompetent, irrelevant and immaterial.

Mr. GREGORY: Mr. Tuttle says he was in active supervision of the map at that time, himself. His answer will disclose, I think, that he did talk at that time with Mr. Gabelman about the matter, and got some information from Mr. Merriwether.

Mr. DAWSON: It will appear my point is well taken.

Same ruling as heretofore. Exception thereto.

(Question read for witness.)

A. I have talked to both Mr. Gabelman and Mr. Merriwether in regard to the matter. I find Mr. Merriwether was called into the drafting-room, where this map was being prepared by Mr. Gabelman, and that the location of the line marked D-C, on Exhibit 8, was drawn here as the result of that conversation,—Mr. Merriwether telling Mr. Gabelman that the land west of D-B and between D-B and D-C, had been acquired by the Government, from the Indians, and added to Missouri.

Mr. DAWSON: Defendant moves to strike out the answer of the witness, as hearsay.

Same ruling. Exception saved.

Q. Were you informed of that conversation at the time of the preparation of the map known as Exhibit 8, and was that information taken into consideration in drawing the line D-C?

A. I don't recollect knowing anything about it at the time the map was made. The information was taken into consideration, as I learn now, in drawing line D-C.

Q. You may have known about it at the time, but forgot it?

A. Possibly. There were hundreds of questions referred to
103 me at the time, and hastily.

Q. I will ask you to look at this map, which I offer in evidence, and which I will ask the Commissioners to mark Exhibit 11, and I will ask you who placed the red-line marked A-B upon said map, and what said line A-B represents.

Mr. GREGORY: I offer this map, marked Exhibit 11, in evidence: This is a certified map of Township No. 10, South, Range No. 25 East of the Sixth Principal Meridian, certified on October 24th, 1907, by H. W. Sanford, Recorder—general Land Office.

Mr. DAWSON: No objection. It may be admitted without objection.

The COMMISSIONER: The witness may answer the question with reference to it.

A. I drew the red-line marked A-B on the map.

Q. What does it represent.

A. It represents the same line marked A-B on Exhibit 8 as the boundary-line between Platte and Clay county, Missouri—sometimes known as the Sullivan line.

Q. I will ask you who placed upon said Exhibit 11 the figures 3100, in red ink, and what said figures represent.

A. I placed those figures on the map; they represent the approximate distance from the center of section 27, Township 10, Range 25, in Wyandotte county, Kansas, to the red-line marked A-B on said map.

Q. How did you derive that measurement?

A. Took that measurement by scale, off the large map marked Exhibit 8.

Q. The 3100 means 3100 feet, does it?

A. Yes, sir.

104 Cross-examination by Mr. DAWSON:

Q. Referring to Exhibit 11, I will ask you, Mr. Tuttle, when you drew the line A-B?

A. This morning.

Q. Did you also write above and below that line the words, "Location of original west boundary of Missouri, as surveyed by John C. Sullivan?"

A. I did.

Q. When did you do that?

A. This morning.

Q. Noting these figures, 3100, to which you have just testified, when did you insert them there?

A. This morning.

Q. How came you to place these entries upon this certificate of an official record?

A. I was requested to do so by counsel.

Q. Counsel for whom?

A. For the State of Missouri.

Q. Mr. Tuttle, you say that you located a line, A-B, on Exhibit 11, by a careful comparison with the map Exhibit 8, and the line A-BB, thereon, is that correct?

A. Yes, sir.

Q. And, did you consult any other record, in drawing the line A-B, on Exhibit 11?

A. Not any other records that control the location of the line—the location of the line depends absolutely on Exhibit 8.

Q. So that, if you are mistaken as to A-D-B, on Exhibit 8 being any part of the old Indian boundary line, then A-B, on Exhibit 11, would be inaccurate, would it.

(Question read) A. Yes, the line A-B, on Exhibit 11 is at the same distance from the center of sections 27 and 34 as on Exhibit 8.

Q. Mr. Tuttle, I want to ask you if you have any personal interest in the outcome of this suit?

A. No, sir.

Q. Early in your direct testimony this morning, you testified that the line A-D-B, on Exhibit 8, was drawn from information
105 gathered from Exhibit 6, did you—or a duplicate of Exhibit 6?

A. Yes sir.

Q. Where, upon Exhibit 6, is the point E located, and point C located, which appear as point C in Exhibit 8?

A. They did not appear on Exhibit 6.

Q. So that the point C, as located in Exhibit 8, was not taken from any information derived from Exhibit 6, or any duplicate thereof?

A. No, only the location of the line marked A-D-B, on Exhibit 8.

Q. Where, on Exhibit 6, does the point appear which, on Exhibit 8, is marked as point D?

A. It falls within the line marked "Former West Boundary of Missouri, as surveyed in 1816," just south of the east and west center line of section 22, Township 50, Range 33, but it is not indicated by any special mark on that line.

Q. Well, please explain how you came to locate the point D on Exhibit 8?

A. The point D just happens to fall on the line A-B, at the intersection of the line A-B with the present center of the Missouri River, produced up stream to the line A-B.

Q. Do you get any information as to the present center of the river, from Exhibit 6?

A. No, sir, it is an old map.

Q. So that, wherever the center of the river may be, as a matter of fact, you did not locate the point D, upon Exhibit 8, from any information gathered from Exhibit 6—or a duplicate thereof?

A. No, sir.

Q. Recurring to your earlier direct testimony in regard to the map which you have drawn, marked Exhibit 8, and particularly to the island in the river, marked "Goose Island," do you know, of your

own knowledge, that the present location of the Missouri
106 River and Goose Island, with reference to the Sullivan survey of 1816, are correctly shown on Exhibit 8—answer yes or no.

A. I will have to answer it No.

Q. This map, Exhibit 8, and the lines drawn thereon, have been prepared, in part, from official maps, in part from copies of official maps, and, in part, from conversation with Mr. Merriwether, is that correct?

A. Yes, sir, and from additional sources of information.

Q. The additional sources of information have been gleaned from well-informed men in this locality, as you understood, is that correct?

A. To a small extent; to a large extent, from the results of our personal*y* surveys, extending over a period of more than 20 years, and from other sources.

Redirect Examination by Mr. GREGORY:

Q. Mr. Tuttle, you stated before you were in charge of the drawing of Map, Exhibit 8?

A. Yes, sir.

Q. And, were you consulted constantly about the various features of it—why did you cause to be placed Goose Island *Goose Island* east of line A-B, upon that map?

A. The outlines of the river and of the island shown on this map, were taken from a recent survey, made by the United States Engineering corps, in connection with the establishment of the harbor-lines of the Missouri River in this vicinity, and was the best information at that time available as to the actual location of the river and of the lines that appear on this map.

Mr. DAWSON: Defendant moves to strike out the answer of the witness, for the reason that it discloses that there is other and better evidence, which is available to the Court, and because the testimony adduced is incompetent, irrelevant and immaterial.
107 The COMMISSIONERS: Same ruling as heretofore.

Q. Was Goose Island, as shown upon Exhibit 8, correctly drawn with reference to the survey of the Government Engineers, to which you refer?

Mr. DAWSON: Objected to as incompetent, irrelevant, immaterial and not the best evidence.

The COMMISSIONERS: Same ruling.

A. Yes, sir.

Mr. GREGORY: Our understanding is, if Your Honors, please, that this location of Goose Island east of the Sullivan line is admitted in all the pleadings in this case,—so, it will be an immaterial point.

Mr. DAWSON: If they do, I cannot see that it is material to develop any more testimony.

Q. On cross-examination, you stated this map was prepared somewhat upon consultation with Mr. Merriwether,—what portion of it

was prepared upon such consultation—what was the nature of the consultation?

A. I can only give my understanding from Mr. Merriwether and Mr. Gabelman on that point. My information is that the line D-C, on Exhibit 8, was drawn on the information furnished by Mr. Merriwether as to that portion of Clay county west of the line A-B, having been purchased from the Indians by the Government, and added to Clay county, and the line A-B and D-C were both left on the map.

By Mr. DAWSON:

Q. Do you know, of your own personal knowledge, that west of the line D-B, on Exhibit 8, there was an appreciable amount of land lying between some portion of the line D-B and the Missouri
108 river, at the time that the land was acquired from the Indians?

A. That is my understanding. I don't know that I can from my own knowledge. I have maps showing it.

Q. You got it from the same general sources as you got the other information in relation to this map?

A. From previous maps, yes, sir, and also shown on Exhibit 6, now in evidence.

Q. And Exhibit 6 does absolutely show that there was an appreciable amount of land lying west of the former boundary of Missouri, as surveyed by Sullivan, and the Missouri river, at a point on the first mile north of the begining of the Sullivan survey?

A. Yes, it states its area to be 22.6 acres; it gives the length and width of it, in figures, chains and links.

Witness excused.

Mr. GREGORY: I offer in evidence a certified copy of so much of the Tract Book of the General Land Office of the United States at Washington, as relates to the Southwest Quarter of Section 10. West half of Section 15, and the West half of Section 22 in Township 50, north of Range 33 west, and ask the Commissioners to please mark it Exhibit 12.

(The said Exhibit 12 is hereto attached, and made a part of this record.)

Mr. GREGORY: I offer in evidence a certified copy of a warranty deed, made by Elisha Harrington and wife to John Lasarg, relating to the northwest quarter of said section 22, and ask that the same be marked Exhibit 13.

109 Mr. DAWSON: Objected to as incompetent, irrelevant, immaterial and not responsive to any issue in this suit.

The COMMISSIONERS: Same ruling.

(The said deed was marked Exhibit 13, and is attached to and made a part of this record.)

Mr. DAWSON: The deed is not objected to because of the fact that it describes the land in 59 north of the base-line west of the Sixth Principal Meridian, when in fact it was intended it should be Township 50, and is Township 50.

Mr. GREGORY: We now offer in evidence a certified copy of the field notes of the survey of fractional sections 27 and 34, Township 10 South, Range 25, East of the Sixth P. M., Kansas, and ask the Commissioners to mark it Exhibit 14.

Mr. DAWSON: Objected to as incompetent, irrelevant, immaterial and not responsive to the issues in this case.

(The said field notes were then marked Exhibit 14, and are attached to and made a part of this record.)

Mr. GREGORY: Complainant now offers in evidence map of Platte county, Missouri, drawn by W. M. Paxton, certified to by V. H. Elliston, County Surveyor of Platte County, Missouri, which we will ask the Commissioners to mark Exhibit 15.

Mr. DAWSON: We object to the same, for the reason that it is incompetent, irrelevant and immaterial; and for the further reason that it does not show when the map was made; and, for the further reason that there is nothing before the Court showing that V. H. Elliston is, in fact, a county surveyor, except a self-serving declaration.

110 Mr. GREGORY: We call attention to this letterhead, on which he makes this certificate.

Mr. DAWSON: Or any certificate from any proper public officer, showing that is his true signature.

Objection overruled.

(The said map was then marked Exhibit 15, and is attached to and made a part of this record.)

Thereupon, the further hearing of testimony herein was, by the Commissioners, adjourned to November 22nd, 1907, to be then resumed at the same place.

111 Now on this 22nd day of November, 1907, the taking of testimony was resumed, at Room 618 Kansas City Life Building, Kansas City, Missouri, pursuant to adjournment as above noted, the complainant being represented as heretofore, and the defendant being represented by same counsel as heretofore.

Mr. GREGORY: We have nothing more on hand just now. We are not quite ready on our other points. As to the growth of trees, we expect to put in testimony when we get it in shape.

Mr. DAWSON: I have a very important matter to call up when your testimony is in, and we will, if satisfactory, let them put in testimony about trees, afterwards, and I will demur at this point.

Mr. GREGORY: Before you demur, we would like to understand the situation we are in—we do not understand the door is closed on us, if we should fine further testimony bearing upon this question. It is difficult to find this evidence: It is from old, old records, old maps. If we should discover anything—and we will frankly say we have nothing further now we know of,—but, if we should, I imagine the Commissioners would be willing to hear it.

Commissioner HAMILTON: Unquestionably.

Mr. DAWSON: The defendant demurs to the evidence adduced on behalf of complainant, upon the following grounds, to-wit:

1st. The complainant has wholly failed to make out its case by the evidence adduced in support thereof.

2nd. The complainant's evidence is wholly insufficient to sustain the material allegations of its bill against this defendant.

The COMMISSIONERS: The demurrer will be overruled.

112 Mr. DAWSON: To which ruling, the defendant duly excepted at the time.

Mr. GREGORY: Counsel for the State of Missouri, request the counsel for the State of Kansas to state the grounds upon which said demurrer is based.

Mr. DAWSON: I think that they have failed to make out their case, and that your evidence is not sufficient to sustain the allegations. I have no trap or trick for complainant, but, in my judgment, as counsel for the respondent, you have not made out your case.

Mr. GREGORY: You think their map is not properly proven—the large map?

Mr. DAWSON: Not that alone—just generally, all the way through, I think you have fallen down in sustaining the allegations of your petition.

Mr. GREGORY: You refuse to state the specific grounds on which your demurrer is based?

Mr. DAWSON: I have made it as specific as I possibly can, when I interposed the demurrer formally. Mr. Commissioners, I suppose you want a statement for the defense?

Commissioner GILMORE: Yes, proceed.

Mr. Dawson made the following statement for the defendant:

"The defendant in this case proposes to prove in this suit that, in 1820, the boundary of Missouri on the west from the left bank of the Missouri river, opposite the mouth of the Kansas river, was a definite straight line, running northward to the intersection of the parallel of latitude which passes through the rapids of the River Des Moines.

113 The defendant's evidence will prove that, in 1820, and for a number of years afterward, there was a tract of territory bounded on the north by the parallel of latitude which passes through the rapids of the River Des Moines, and bounded on the east by the west line of the State of Missouri, as established in 1820, and bounded on the west and southwest by the Missouri river, which territory was, in 1820, and for a number of years afterward, Indian country; and, defendant's evidence will prove that the said tract, thus described, was acquired by the United States Government from certain Indian tribes, about 1825.

The defendant's evidence will prove that the complainant herein, through its General Legislative Assembly, presented a Memorial to the Congress of the United States, in 1831, which Memorial respectively solicited that the said tract be attached to the State of Missouri, and urged many reasons therefor, one reason, especially, being that, at that time, the lands lying west of the Missouri river were inhabited by savage Indians, and that the policy of the national Government at that time was to establish the country lying west of the

State of Missouri and of the Missouri river as a permanent abiding place for savage Indians, and that the Missouri river was a much more suitable and desirable boundary line to separate the wild and savage Indian tribes from the civilized people of the State of Missouri, than the artificial and arbitrary boundary line theretofore established for the western boundary of the state of Missouri, from the confluence of the Kansas and Missouri rivers northward.

The defendant's evidence will prove that a committee, or committees, of the United States Congress, duly considered the said Memorial of the State of Missouri and made a report, or reports of their
114 deliberations, to the Senate of the United States and to the House of Representatives of the United States, recommending that the Memorial of the State of Missouri be granted, and urged, among other good and sufficient reasons therefor, that the Missouri river was a more suitable boundary line between the State of Missouri and the then savage Indian country to the westward, than any arbitrary, arbitrary and artificial boundary line laid out by a scientific surveyor, and decreed by an arbitrary legislative enactment.

The defendant's evidence will prove that, in pursuance of said Memorial of the State of Missouri, and the said report of the committee of the United States Congress, the United States Congress passed an Act granting to the State of Missouri the said tract of land for local jurisdictional purposes, and extending the boundaries and territory of the State of Missouri so as to include said tract of land, and so as to abandon, for every purpose, the original, arbitrary and artificial surveyor's boundary line which, theretofore, had been the western boundary of the State of Missouri from the confluence of the Kansas and Missouri rivers to the north, and established in lieu thereof and in substitution therefor, the natural, desirable, suitable boundary line, to-wit: The Missouri river and the meridian line of the main channel thereof from the confluence of the Kaw and Missouri upward following the thread of said river to the north boundary of the State of Missouri.

The defendant's evidence will also show that the Constitution of the State of Missouri was amended about the year 1835, for the purpose of extending the boundaries of the State of Missouri north of the Missouri river and west of the old State line, running north from the confluence of the Kansas and Missouri rivers, so as to in-
115 clude the territory ceded by the Indian tribes to the United States Government, in accordance with the act of Congress heretofore referred to.

The defendant's evidence will also show that the General Legislative Assembly of the State of Missouri, about the same time, 835 or 1836, passed an act ratifying and consenting to the thus altered boundaries of the State of Missouri.

The defendant's evidence will also show that, in pursuance of the said Memorial of the State of Missouri to the United States Congress, and in accordance with the reports of committees of the United States Congress, which had the matter under consideration, the Congress of the United States passed an act, on June 7th, 1836, agreeing to the altered boundaries of the State of Missouri, involved in this

controversy, and the President of the United States issued his proclamation extending the boundaries of the State of Missouri westward to the Missouri river,—in about 1837. The defendant's evidence will also show and prove on December 16th, 1836, the General Legislative Assembly of the State of Missouri duly ratified the Act of Congress, altering and extending the boundaries of the State of Missouri to the Missouri river north of the confluence of the Kansas and Missouri rivers.

The defendant's evidence will also prove that the counties in the State of Missouri bordering upon the island in controversy in this suit, and the only counties in the State of Missouri in or near the neighborhood of this disputed boundary line, are Platte, Clay and Jackson counties in the State of Missouri, and defendant's evidence will prove that the boundaries of said counties, as established by the Legislature of the State of Missouri, cover the entire course
116 of the Missouri river along all that part of the boundary line between the States of Kansas and Missouri the parties to this suit, which is affected by this controversy.

The defendant's evidence will also prove, that one of the great and learned courts of the State of Missouri had the subject of the boundary line between the complainant State and defendant State herein, under consideration, in the year 1892, in a lawsuit entitled "Millard F. Cooley, Appellant, *against* Jas. F. Golden, and others, respondents," and that said tribunal, in said suit, gave it as its judgment and opinion that the Missouri river and the meridian line of the main channel thereof was the boundary line between the State of Missouri and the State of Kansas for all points north of the confluence of the Kansas and Missouri rivers. 52 Missouri Appeals, 229, *et seq.*

The defendant's evidence will also show that another learned court, to-wit, the United States Circuit Court for the District of Kansas, in the year, 1889, in a case entitled "The St. Joseph & G. I. R. Co., *vs.* Devereau, ex-Sheriff," had the matter of the boundary line between the State of Missouri and the State of Kansas north of the Kansas and Missouri rivers confluence, and gave it, in that lawsuit, as its judgment and opinion, that the meridian line of the main channel of the Missouri river was the boundary line between the State of Missouri and the State of Kansas, for all points north of the confluence of the Kansas and Missouri rivers. (41 Fed., 14.)

The defendant's evidence will also prove that the Governor of the State of Missouri and the public authorities of said State, complainant herein, have, at various times, recognized the governmental jurisdiction of the defendant State over the island involved in this controversy, and have ceded and renounced unto the defendant
117 State the jurisdiction of said island for the purposes of enforcing the criminal laws of the State of Kansas and for the maintenance of law and order therein.

The defendant's evidence will further prove that the public authorities of the State of Missouri and of the Legislature of the State of Missouri, and of the counties bordering upon this disputed boundary line, and the public authorities of the State of Kansas, and of the State Legislature of the State of Kansas, and of the counties of the

State of Kansas bordering upon this disputed boundary line, have recognized the Missouri river as the boundary line between the State of Missouri and the State of Kansas, for over forty years."

118 Mr. DAWSON: The defendant offers in evidence part of page fifteen of the Revised Statutes of the State of Missouri, third edition, dated 1841, which purports to define the boundaries of the State of Missouri, in the Constitution of the State of Missouri, on the 12th day of June, 1820. I ask that this be copied into the record, and marked "Exhibit A." This consists of the title, preamble, and Article One of the Constitution of the State of Missouri, as adopted in 1820.

The said Exhibit A is in words and figures as follows, to-wit:

"Constitution of the State of Missouri.

We, the people of Missouri, inhabiting the limits hereinafter designated, by our representatives in convention assembled, at St. Louis, on Monday the 12th day of June, 1820, do mutually agree to form and establish a free and independent republic, by the name of "The State of Missouri"; and for the government thereof, do ordain and establish this constitution.

ARTICLE I.

Of Boundaries.

SEC. 1. Description of the permanent boundaries of the State of Missouri.

We do declare, establish, ratify and confirm, the following as the permanent boundaries of said state, that is to say: "Beginning in the middle of the Mississippi river, on the parallel of thirty-six degrees of north latitude; thence west, along the said parallel of latitude, to the St. Francois river; thence up, and following
119 the course of that river, in the middle of the main channel thereof, to the parallel of latitude of thirty-six degrees and thirty minutes; thence west, along the same to a point where the said parallel is intersected by a meridian line passing through the middle of the mouth of the Kansas river, where the same empties into the Missouri river; thence, from the point aforesaid, north along the said meridian line, to the intersection of the parallel of latitude which passes through the rapids of the river Des Moines, making the said line correspond with the Indian boundary line; thence east, from the point of intersection last aforesaid, along the said parallel of latitude, to the middle of the channel of the main fork of the said river Des Moines; thence down along the middle of the main channel of the said river Des Moines to the south of the same; where it empties into the Mississippi river; thence due east to the middle of the main channel of the Mississippi river; thence down, and following the course of the Mississippi river, in the middle of the main channel thereof, to the place of beginning."

Mr. DAWSON: The defendant desires next to introduce in evidence the memorial of the General Assembly of the State of Missouri, dated January 15, 1831, praying for the alteration and extension of the boundary lines of the State of Missouri, and asks that it be marked "Exhibit B."

The said Exhibit B is in words and figures as follows, to-wit:

120 (EXHIBIT B.)

STATE OF MISSOURI, *ss:*

I, John E. Swanger, Secretary of State of the State of Missouri, hereby certify that the annexed pages contain full, true and complete copies of a memorial to the Congress of the United States as the same appears in the laws of the State of Missouri, passed at the first session of the Sixth General Assembly, begun and held at the City of Jefferson, the 15th day of November, in the year of our Lord, one thousand eight hundred and thirty; and a resolution of the said General Assembly directing the Secretary of State of Missouri to forward copies of memorials passed at said session to Senators and Representatives in Congress, approved January 15, 1831, as appears by comparing the same with the laws, officially printed, now on file in the State Library; the original rolls of said laws having been destroyed by fire in the destruction of the capitol building in 1837.

In testimony whereof, I hereunto set my hand and affix the Great Seal of Missouri. Done at office in the City of Jefferson, this 16th day of October, A. D. 1907.

[SEAL.] JOHN E. SWANGER,
Secretary of State.

121 To the Honorable the Congress of the United States of America:

The memorial of the General Assembly of Missouri, respectfully shows, that many inconveniences have already arisen, and others are expected to arise from the improvident manner in which certain parts of the boundaries of this State have been designated. When this State Government was formed, the whole country on the west and north, was one continued wilderness, inhabited by none but savages, and but little known to the people or to the government of the United States, its geography was unwritten, and none of our citizens possessed an accurate knowledge of its localities, except a few adventurous hunters and Indian traders. The western boundary of the State as indicated by the act of Congress of the sixth of March, eighteen hundred and twenty, and adopted by the Constitution of Missouri, is a "meridian line passing through the middle of the mouth of the Kansas river, where the same empties into the Missouri river," and extends from the parallel of latitude of 36 degrees and thirty minutes north, "to the intersection of the parallel of latitude which passes through the rapids of the river "Des Moines." The part of this line which lies north of the Missouri river, has never been sur-

veyed and established, and consequently its precise position and extent are unknown. It is believed, however, that it extends about one hundred miles north from the Missouri river, and almost parallel with the course of the stream, so as to leave between the line and the river a narrow strip of land, varying in breadth from fifteen to thirty miles. This small strip of land was acquired by the United States from the Kansas Indians, by the treaty of the third of June, eighteen hundred and twenty-five, and is now unappropriated and at the free disposal of the General Government.

Aware that it has been and now is the policy of the government, to remove the Indians yet remaining in the United States, to the country west of Missouri and Arkansas, we cannot suppress the expression of our fears, of the many and great calamities which may be brought upon this state, by crowding our frontier, already
122 surrounded by restless hordes of native savages, with a mixed multitude of foreign Indians, amounting as we are informed, to about one hundred thousand. The greater part of the country west of this state is destitute of wood and poorly supplied with water. The buffalo have disappeared before the white man, and have fled from the sound of the rifle; and such is the scarcity of game, that even the aboriginal tribes of that region, are annually thinned by famine. The government cannot be ignorant of their wretched condition, for the melancholy truth is forced upon the attention of the nation, by the public officers stationed on this frontier. The Superintendent of Indian Affairs at St. Louis more than three years ago, in an official letter addressed to the Secretary of War, discloses a degree of suffering and misery among our Indian neighbors inconceivable to those who are ignorant of their improvident habits and precarious mode of life. He declares "that the living child is often buried with the dead mother, because no one can spare it as much food as would sustain it through its helpless infancy."

If such be the deplorable condition of the native tribes, what horrors may we not anticipate when the frontier shall be surcharged with the jarring nations from the interior of the States. Without a system of judicious legislation and the constant interposition of the strong arm of the government, war will be the inevitable result. Already the official reports of the War Department manifest the inability of the Executive to preserve the peace of the frontier, without the intervention of Congress, and the necessity will soon become apparent to create a force more active and efficient than the ordinary material of the army, to protect the whites from the Indian and the Indians from each other.

If the Indian tribes alone were to suffer by this policy, we should leave them in their misery to the wisdom and humanity of Congress. But we too are involved in the evils of their lot. Our frontier inhabitants must suffer by their famine and will be forced to participate in their wars. If divided from us by an ideal line
123 only, those who are beaten in war or are suffering from hunger, will fall back upon our settlements for safety and food. If these be denied them, or inadequately granted, the nation is at once in a state of war, for the vanquished will flee from death and it is

idle to talk about the principles of law and the rights of property to starving men with arms in their hands. When our affairs shall arrive at this crisis we must destroy them or fall by their hands. All experience proves that men of such opposite habits and conditions cannot live in contact with each other in harmony and peace. Their discordant habits will conflict and irritate; the mingling of their horses and cattle in common pasture will produce continual quarrels. And the imprudence and crimes of individuals will provoke the vengeance of communities already viewing each other with mutual fear and hatred. This picture, it is believed, will not be considered overcharged, but if the government in its wisdom to get rid of the great difficulty, connected with the existence of Indian tribes within the boundaries of sovereign states, should think proper to place them on our borders, we call upon the General Government to adopt a system of defense for us commensurate with the danger.

These considerations seem to us sufficiently obvious to impress upon the public mind the necessity of interposing, whenever it is possible, some visible boundary and natural barrier between the Indians and the whites. The Missouri River, bending as it does, beyond our northern line, will afford the barrier against all the Indians on the southwest side of that river, by extending the north boundary of this State in a straight line westward, until it strikes the Missouri, so as to include within this State the small district of country between that line and the river, which we suppose is not more than sufficient to make two, or at the most three respectable counties.

Aside from the considerations connected with the peace and safety of the frontier, there are other and all sufficient reasons for this addition to the State. Our western line as it is now supposed to run, from the mouth of the Kansas, north, is about one hundred
124 miles long, and the country is settled and is rapidly settling to its utmost verge. The Missouri is the only great highway of this region, and the only means of conveying its productions to market. Without this addition, those who may settle near the northwest corner of the State, will have an hundred miles of land carriage to the nearest point of their only great road to market, or will be compelled (in order to reach the nearest point of navigation) to pass for twenty or thirty miles through a savage, and perhaps a hostile country, a view of the map will prove this position.

The district of country in question, is represented to be as rich, as beautiful and as well adapted in all the purposes of agriculture as any in the west, and to abound in creeks and rivulets which afford excellent sites for all the mills and machinery which the densest population and the highest culture can require. While we consider that the incorporation of this slip of country with Missouri would produce a considerable addition to the revenue of the general government from the sale of the public land therein, and is necessary to the commerce of a large portion of the State, and to the peace and safety of the frontier, we do not hesitate to declare that it is in our opinion, inconvenient and unsuitable for the Indians. Its contact with the white settlements, with no barrier between, and its proximity to the

Delaware Indians, who are located by the government on the opposite sides of the river, forbid the hope of their subsistence by the chase; and the history of our country affords no example of a savage community forsaking at once their hereditary habits and settled prejudices to practice the arts and enjoy the comforts of civilized life.

In every view then, we consider it expedient that the district of country in question should be annexed to and incorporated with the State of Missouri; and to that end we respectfully ask the consent of Congress.

Your memorialists further represent that the northern boundary of this State, as indicated by the act of Congress of the sixth
125 of March, eighteen hundred and twenty, and adopted by our Constitution, is the parallel of latitude which passed through the rapids of the river Des Moines extending on that line, from the northwest corner of the State "to the middle of the channel of the main fork of the said river Des Moines; thence down along the river of the main channel of the said river Des Moines, to the north of the same, where it empties into the Mississippi River". This line is vague and indefinite. The country on the Des Moines is still unsettled and comparatively unknown, although the flood of migration now pouring into this State is rapidly tending to that border. We are not informed of the exact local position of the "Rapids of the River Des Moines", nor whether those rapids are occasioned by a single obstruction of the stream, so as to indicate the precise position of the line, or are produced by a succession of shoals, extending like the rapids of the Mississippi for many miles. And if, on examination, it should be found that the course of the Des Moines, like that of the Mississippi, is disturbed by different rapids with long intervals of a smooth current between them, it may well be doubted which of the rapids shall indicate our northern boundary. And we consider it highly important that the line in question should be definitely settled and distinctly known before the white settlements now rapidly spreading, shall reach the border, and before the possibility of a conflict with the Indian tribes, which we have reason to apprehend, may be removed to that frontier. And to that end we respectfully request that Congress will take such measures as to their wisdom and justice shall seem most proper.

Your memorialists further represent, that the small tract of country lying immediately in the fork of the Mississippi and Des Moines rivers, and extending to the northern boundary of this State, when produced in the right line, through the Des Moines to the Mississippi, has been ceded to the United States by the Suac and Fox Indians, by the treaty of the fourth of August, eighteen hundred and twenty-four, and is now held by the United States, for the use and benefit of the half blood descendants of those tribes. It has ceased to
126 be Indian land, and is held by the nation for the use of individuals only, some of whom have been reared among us, and are as civilized and as well instructed as any of our citizens. The tract is small, being an acute angle between the rivers, and extending according to the common belief, about thirty miles from south to north. Considered in reference to its area only, it is of little moment either

to this State or to the nation; but there are many considerations which give to it importance and value. It is a wedge in the corner of the State, disfiguring the form and destroying the compactness of our territory. The title is vested in the United States and the usufruct belongs to a class of individuals who are incapable of establishing a separate government for themselves, and can never be acknowledged as a State or Nation. It borders upon the Mississippi for the great part, perhaps the whole extent of the lower rapids of that river, and thus embraces a spot, which, in future times, will be of immense importance to the commerce and the intercourse of the whole western valley. Your memorialists anticipate the day when the obstruction to navigation will be overcome by a canal around those rapids; when the inexhaustible power of that mighty stream will be applied to almost every variety of manufacturing machinery; and when a commercial city will spring up in that wilderness, to serve as the great entreport of the upper and lower Mississippi.

With these views of the present condition and future importance of that little section of country, and seeing the impossibility of conveniently attaching it now or hereafter to any other state, your memorialists consider it highly desirable, and indeed necessary, that it should be annexed to and form a part of the State of Missouri. And to the accomplishment of that desirable end, we respectfully request the assent of Congress.

Resolved, by the Senate and House of Representatives, That it be made the duty of the Secretary of State to forward to each
127 of our Senators and Representatives in Congress, one copy of each of the memorials that have been, or may be, passed at the present session of the General Assembly, immediately after the approval of the same by the Governor.

Approved January 15, 1831.

128 Mr. DAWSON: The defendant desires to offer in evidence section eight of a chapter entitled, "County Boundaries" at page one hundred and thirty-four, Revised Statutes of Missouri, 1841, defining the boundaries of Clay county, and asks that the same be marked "Exhibit C".

The said Exhibit C is in words and figures as follows, to-wit:

"SEC. 8. Clay.—Beginning in the Missouri river; thence north to the division line between ranges twenty-nine and thirty, and with said line to the northeast corner of section thirty-six, of township fifty-four, range thirty, thence west to the state line; thence south to the Missouri river, and down the same to the beginning."

Mr. DAWSON: Defendant desires to introduce in evidence section seventeen of the same act, on page one hundred and thirty-five, of the same volume of statutes, act approved March 20, 1835, defining the boundaries of Jackson County, and asks that the same be marked "Exhibit D".

The said Exhibit D is in words and figures as follows, to-wit:

"SEC. 17. Jackson.—Beginning in the Missouri river, at the place where the western line of the state crosses it; thence south to the line between townships forty-six and forty-seven, thence east with the said

township line to the middle of range twenty-nine; thence north to the Missouri river; thence up the same to the beginning."

129 Mr. DAWSON: The defendant desires to introduce document number two hundred and sixty-three, of the Twenty-third Congress, first session, as shown in Senate Documents, 1st Sess. 23d Cong., Volume Three of the files of the Kansas State Historical Society, and asks that it be marked "Exhibit E."

The said Exhibit E is in words and figures as follows, to-wit:

"23D CONGRESS, (263.)
1st Session.

In Senate of the United States.

April 8, 1834.

Read, and ordered to be printed.

Mr. White, from the Committee on Indian Affairs, made the following

Report.

The Committee on Indian Affairs have had under consideration a resolution of the 23d January, by which they were instructed 'to inquire into the expediency of extending the northern boundary line of the State of Missouri, westward to the Missouri river, and eastward from the rapids of the Des Moines to the Mississippi river, and inquire whether the northern boundary line has been ascertained of the State of Missouri, according to compact;' and ask leave to submit the following report:

According to the present boundaries of the State of Missouri, as described in the act of Congress of the 6th of March, 1820, the whole of the northern boundary is an imaginary line; and so, likewise, is all that part of the western boundary between the northwestern corner of said State and the mouth of the Kansas river.

130 It has been the plan of the Federal Government, for many years, to induce the Indians residing in the different States and Territories to exchange the lands where they reside for lands west of the river Mississippi, and remove and become permanently settled there. Many of the Indians have acceded to the propositions made to them, and have actually removed; more are now shortly to be removed. In assigning lands to the Indians west of the Mississippi, the lands on the northern boundary of Missouri, from the river Des Moines to within a few miles of the northwestern corner of the State, have been already assigned to the Indians who are now settled upon them. The lands on the western boundary, from the northwest corner of the State to the mouth of the river Kansas, have not been, by any treaty yet ratified, assigned to any Indians. The committee have been informed, and believe, a few Indians at present reside in that quarter, but their continuance there is merely at the will, or by the sufferance, of the United States, and those Indians are preparing grounds for a crop the present year on lands which belong to them north of the State of Missouri, and intend shortly to remove there.

If the lines of the State of Missouri remain as they now are, when the State shall have been entirely populated, and the Government of the United States shall have completed its plan of Indian settlements, so far as there is no boundary between the whites and the Indians but in ideal or artificial line, many disorders will most probably take place between the border settlers, which will be avoided if such lines can be substituted by natural boundaries. By extending the northern boundary of the State of Missouri from the point where it now intersects
the river Des Moines due west, until it strikes the river Mis-
131 souri, and pursuing that river down with its various meanders to where it intersects the western boundary line of the State at the mouth of the Kansas river, a natural boundary, formed by a river about half a mile wide will be substituted, in place of an ideal or artificial boundary for about one-third of the whole length of the western boundary line of said State. This extension of the boundaries of the State the committee would recommend. In a pecuniary point of view it can make no difference to the United States: the additional territory thus included in the State of Missouri will still be the property of the Federal Government, and liable to be disposed of at such times, and upon such terms, as it may judge expedient. By thus extending the northern boundary line from the point of its present termination to the river Missouri, and then making that river the western boundary to the mouth of the Kansas river, will establish a convenient and plain natural boundary line between the whites and the Indians, and put it in the power of the citizens of Missouri, as well as the Indians, to have and enjoy all the advantages to be derived from the navigation of that part of the river which forms the said boundary.

The reasons which have influenced the committee to recommend an extension of the boundary of the State to the west, do not apply to that part of the resolution which relates to an extension of the northern boundary from the river Des Moines to the Mississippi river, and then down that river to the mouth of the Des Moines. This last river now forms a natural boundary between the whites and the Indians
from the point where the State line strikes it to its junction
132 with the Mississippi. The land in the forks of those rivers which would be included in the State of Missouri, is already settled by a portion of the Indian population whose rights are secured to them by a treaty which has been ratified by the advice and consent of the Senate. Under these circumstances, the committee are of opinion that it is not expedient to extend the northern boundary any farther east than the river Des Moines, the place o- its present termination.

The remaining part of the resolution has made it a duty of the committee to inquire whether the northern boundary of the State of Missouri has been ascertained, according to compact.

In answer to this branch of the resolution, the committee would observe that they have not been enabled to find any evidence that the said line has ever been ascertained by any person authorized by the United States to ascertain or mark the same. The committee have been informed a*b*d believe it to be true, that the State of Missouri, for the sake of knowing how far her jurisdiction to the no-th would

extend, did employ persons who, under the authority of the State alone, ascertained and marked the northern boundary line. Whether the line thus marked is the true northern boundary, the committee have no means of knowing.

As the Indians have been already located in the country north of said State, and more will probably be settled at no distant day in the same quarter, the committee are of opinion that provision ought to be made by law for the appointment of a commissioner on the part of the United States, who, with a commissioner to be appointed by the State of Missouri, shall ascertain, without delay, the northern boundary line of said State, and cause the same to be plainly, and distinctly marked, in such manner as will be durable, the whole length thereof, from the river Des Moines to its western termination."

133 Mr. DAWSON: The defendant also offers in evidence report number three hundred and seventy-nine of the House of Representatives, Twenty-Fourth Congress, First Session, entitled "Missouri—Extension of Western Boundary," and covering five or six pages of "Reports of Committees, First Session, Twenty-fourth Congress, Volume Two, 1835-6." I ask that this be marked "Exhibit F."

The said Exhibit F is in words and figures as follows, to-wit:

"24TH CONGRESS, (Rep. No. 379.) *Ho. of Reps.*
1st Session.

Missouri—Extension of Western Boundary.

(To Accompany Bill H. R. No. 381.)

HOUSE OF REPRESENTATIVES, *February* 12, 1836.

On motion of Mr. Ashley,

Resolved, That the Committee on Indian Affairs be instructed to inquire whether the Indian title is or is not extinguished to the slip of land lying between the western boundary of the State of Missouri and the Missouri river, and if not to inquire into the expediency of providing by law for its entire extinguishment.

FEBRUARY 26, 1836.

Mr. H. Everett, from the Committee on Indian Affairs, made the following

Report.

The Committee on Indian Affairs having had the foregoing resolution under consideration, submit the following report:

The ultimate object of the resolution, as explained by the mover,
is to annex the slip of land to the State of Missouri, whenever
134 the Indian title shall be extinguished. The committee wish
to present this to the House, in the outset of their report, as
the only consideration that gives importance to the inquiries.

On the 15th July, 1830, a treaty was concluded at Prairie du Chien, between the United States, on the one part, and the confederated tribes of the Sacs and Foxes; the Medawah, Kanton, Wapacoota, Wappeton and Sissetong bands or tribes of Sioux; the Omahas, Ioways, Otoes, and Missourias, on the other part. These tribes were then living on the lands described in the first article of the treaty, and on other lands adjoining on the north. The object of this article was to concentrate them within the boundaries therein described; and, if they contained more land than was sufficient for their support, to enable the United States to locate other tribes within that territory, and for the purpose of effecting the latter object authority was given to the President to allot and assign to each of the resident tribes distinct portions of the territory, and to locate other tribes on the remainder. The slip of land mentioned in the resolution is contained within those boundaries.

The first article is as follows:

'Article 1. The said tribes cede and relinquish to the United States forever, all their right and title to the lands lying within the following boundaries, to-wit: beginning at the upper fork of the Dèmoine river, and passing the sources of the Little Sioux, and Floyd's river to the fork of the first creek which falls into the Big Sioux or Calumet river, on the east side; thence down said creek, and Calumet river to the Missouri river; thence down said Missouri river to the Missouri State line, above the Kansas; thence along said line to
135 the northwest corner of the said State; thence to the highlands, between the waters falling into the Missouri and Demoine, passing to said highlands along the dividing ridge between the forks of the Grand River; thence along said highlands or ridge, separating the waters of the Missouri from those of the Demoine to a point opposite the source of Boyer river; and thence in a direct line to the upper fork of the Demoine, the place of beginning. But it is understood that the lands ceded and relinquished by this treaty are to be assigned and allotted, under the direction of the President of the United States, to the tribes now living thereon, or to such other tribes as the President may locate thereon, for hunting and other purposes.'

This article does not extinguish the Indian title, but only modifies it. It is not a cession for the use of the United States, but a cession in trust, for the purposes, and for the purposes only, specified in the last sentence of the article: first, for the use of the tribes then living on the lands ceded: secondly, for the use of such other tribes as should be located thereon. The uses of the cession being expressed, all others are necessarily excluded. Though whenever portions of the land should be assigned and allotted to the resident tribes, the immediate parties to the treaty, their right of soil to the residue would be extinguished; yet the trust would remain, and they would be entitled to insist on its execution. The cession guaranties to them an entire community of Indian tribes, and withholds from the United States the power of distracting this community by interposing white settlements between their tribes. This guar-

anty, necessarily implied from the use expressed, was the
136 basis of the treaty, and inures, not only to the resident tribes
parties to it, but to all the tribes that should thereafter be located, on the faith of that treaty.

At the date of the treaty, the Ioways resided in the southerly part of the Territory, between the State of Missouri and the Missouri river, where they yet reside. If any of the other tribes who were parties to the treaty, then resided in that territory, they have since withdrawn from it; and no other tribe has been located upon it.

It does not appear that any assignment or allotment of portions of the ceded territory, has ever been made by the President, as contemplated by the treaty; but that the several tribes and bands have withdrawn within limits fixed by themselves, and which are respected by each other, and have not been objected to on our part, but have at least in one instance been recognized by a treaty, which will be hereafter referred to. With the exception then of the Ioways, there are no tribes now residing on the ceded territory west of the State of Missouri; and from the acts of the tribes, and the acquiescence of the United States, the inference may be fairly drawn, that the United States may now locate any other tribe on all or any part not in the possession of the Ioways; and that for this purpose, the title of the tribes, parties to the treaty, is extinguished. But that for the purpose of appropriating the territory for any other use, the Indian title is not extinguished.

The committee are next directed to inquire into the expediency of providing by law for its entire extinguishment. This involves the
questions, whether it can be done consistently with the im-
137 plied guaranty of the treaty of 1830; in what manner it can be done; and for what reason it should be done?

The committee are of opinion that it may be done without violating the guaranty of the treaty. The principle of that guaranty is to reserve the community of Indian tribes entire. It would be violated by interposing white settlements among them. What is now contemplated, is to obtain a relinquishment of a portion on one extreme of their territory, by removing the Ioways to such other vacant parts of the ceded land, or such territory of the United States, as they may agree to accept as an equivalent. The spirit of the guaranty is for the security of the contiguous residence of the tribes, and this will not be impaired by the relinquishment proposed. There is nothing in the guaranty that would prevent their acquiring additional territory on one border, and relinquishing for an equivalent on the other; or indeed, if all the tribes and bands now on the territory should desire it, from ceding the whole, and removing to any other part of the United States territory which should be ceded to them in exchange.

From the principles already advanced, it follows, that the extinguishment of the Indian title to the lands in question, can be effected only by the consent of all the Indian tribes now resident on the ceded territory, whether parties to the treaty or since located upon it, by the act of the Government. The tribes now resident on the ceded lands, are the tribes and bands which were parties to the

treaty of 1830, and the united nation of the Chippewas, Otoes, and Pottawatamies, located thereon by the treaties of 1833 and 1834, ratified in 1835.

138 The assent of the united nation of Chippewas, Otoes, and Pottawatamies, has been obtained. By the treaty of Chicago, concluded with them on the 26th September, 1833, they were to be located on lands, a part of which lay west of the State of Missouri. This treaty was laid before the Senate for ratification at the next session of Congress. (1833-4.) During that session, the subject of annexing the slip of land in question to the State of Missouri, was brought incidentally under the consideration of the Committee on Indian Affairs. In their report, in reference to the boundaries of the western territory, made to the House on 20th May, 1834, they say, 'The lands between the State of Missouri and the Missouri river, are not included within the western territory. It will be obvious from an inspection of the map, that an outlet through those lands will be necessary to the people of Missouri, and that their convenience will require an extension of their western boundary to that river.' On the 22d May, two days after the report, the treaty was ratified with an amendment, having the same object in view, viz: 'Provided, that the lands given to the said Indians, in exchange, in place of being bounded in the manner described in the treaty,' (viz. beginning at the mouth of Boyer's river, on the east side of the Missouri river; thence down the said river to the mouth of the Raudowny river; thence due east to the west line of the State of Missouri; thence along the said State line, to the northwest corner of the State; thence, &c. &c.) 'be so changed that the first line shall begin at the mouth of Boyer's river, and run down the Missouri to a point thereon, from which a line running due east, will strike the northwestern

139 corner of the State of Missouri, from that point due east till it strikes the said northwest corner; thence, &c. &c.' T-us requiring of the Indians, the relinquishment of that part of their proposed location, which lay west of the State of Missouri.

Immediately after this, the same subject was brought directly before the House of Representatives. During the same session (of 1833-4) a bill had been reported by its Committee on the Territories,' authorizing the President of the United States, to run and mark the line dividing the territory of the United States from the State of Missouri.' On the 5th June, 1834, the bill was amended in Committee of the Whole, (and reported as amended to the House) by directing the line to be run from the mouth of the Kansas river,' up the Missouri river until it shall reach the parallel of latitude which passes through the rapids of the Demoins in the river Mississippi, and from thence to the Mississippi river, &c. &c.' and by adding the following section:

'SEC. 4. And be it further enacted, That all that part of the territory of the United States embraced within the boundaries aforesaid, which was not originally included within the State of Mississippi, be, and the same is hereby, attached to, and shall form a part of, the State of Missouri; and the sovereignty, jurisdiction, and laws of the said State shall extend over the said ceded territory, in the same man-

ner, and under the same conditions, as if the same had originally, on the admission of the State of Missouri into the Union, been included within its limits: Provided, That nothing in this act shall be construed to convey to the State of Missouri any right or title to any lands now belonging to the United States.'

140 On the same day, these amendments were concurred in by the House, and after being further amended, were postponed, and not again taken up on account of the press of business at the close of the session.

Subsequent to these proceedings, on the 1st October, 1834, the said united nation agreed to the amendment to the treaty proposed by the Senate; and on the 21st February, 1835, the treat-, as thus modified, was definitively ratified. It is obvious from this history of the treaty, that its purpose and object was well understood by all parties; and that no further assent is necessary, on the part of said united nations, to the proposed extension of the western boundary of Missouri.

The assent of the other tribes now residing on the ceded territory is necessary. They have, however, with the exception of the Ioways, no interest in the soil, west of the State of Missouri; they have no pecuniary interest at stake. They have the right to insist that none but Indians of other tribes shall be located on it; but, having had, or rather taken, their portions, have no right to ask any part of it for themselves. It cannot be material to them, whether other tribes are located on their right on on their left. They have, however, a political interest in the extent of country to be assigned to the community of Indians of which they are to be a part; and if their limits without the territory between the State of Missouri and the river Missouri, is not sufficient for such community, they have a right to insist that an equal extent of other adjoining territory shall be substituted for the same purposes, or for the location of such other tribes as the

141 President may think proper to place there, but for no*t* other purpose. It is believed, however, that their remaining limits will be sufficient for the location of all the tribes intended to be removed, and that no substitution of territory will be required.

The Ioways may be considered as having some claim to remain in their present location, and with them a separate arrangement may be necessary. Whether they will remove north of the State of Missouri, or to vacant lands on the other side of the Missouri, should be left to them to determine. Thus by the assent of the tribes now on the ceded territory, and probably with very little pecuniary consideration, it is supposed that the Indian title to the lands in question, may be extinguished.

The remaining consideration is, whether provision ought to be made by law for its extinguishment.

The only reason on which it can commend itself to the House is, that when the Indian title shall be extinguished, the lands ought to be ceded to, and form a part of, the State of Missouri; and the committee deem this to be a sufficient reason.

When the State of Missouri was admitted into the Union, and its western boundary (a line of longitude) fixed, the expectation was that other States, would be formed on its west; as a division between States of the Union, a longitude line was naturally adopted. The

use of the Missouri river would have been equally convenient to the people of Missouri, whether it was their border line, or within the territory of another State, where they would have equal rights. Since that period, however, the United States have adopted the policy of locating the Indian tribes on the territory west of the Missis-
142 sippi, and their location has placed them on the frontier of Missouri; and thus leaving the Missouri river, for about 100 miles, wholly within the Indian country, and accessible to the people of the State only through Indian tribes: tribes who, having a right to make their own laws, may subject the navigation of the river to their own license. The northwest section of Missouri must look to that river as the outlet for their produce. In places, the slip is not more than five miles wide, and, at the greatest width not exceeding, in a direct line, fifty miles. The convenience of the people of that State, in the opinion of the committee, require that this slip of land should, in no event, become a barrier between them and the Missouri river.

Rivers will also be found to be the most convenient boundaries between the Indians and the white people. They do not subject the parties to the petty vexations arising from the uncertainty of the line or from the proximity of possessions; and they will afford protection against the more deliberate trespasses and aggressions of the evil disposed on both sides. In the present case, it is believed the river, as a boundary, will be much preferred by the Indians on the other side of the river, who are equally interested, with the people of Missouri, in having a well defined boundary.

It is not perceived that any well founded objection against the proposed change or boundary can be made. No other State is proposed to be affected by it. The lands proposed to be ceded to Missouri are not to be taken from a territory that is now proposed ever to be included in a State, but from a country set apart for the emigrant and other Indians. It is not intended to effect the pe-
143 cuniary interests of the United States. The original right of soil is not to be granted to the State of Missouri; after the cession, the property in the lands will remain in the United States, to be disposed of as other public lands. The quantity is estimated on the map of 1,891,600 acres, and to be of an average quality; and it is believed it will produce, on sale, a fair equivalent for any lands, or other consideration, that it may *be* necessary to give for the entire extinguishment of the Indian title. The extent of country to be added to Missouri is not of sufficient magnitude as to excite jealousy on the part of the other States.

The committee being then of opinion that provision ought to be made for the entire extinguishment of the Indian title to the lands between the State of Missouri and the Missouri river, have instructed their reporter to move an amendment to the bill making Indian appropriations for the Indian Department (No. 70) for an appropriation of two thousand dollars, to enable the President to hold treaties for the purpose of extinguishing the title. They have limited it to this sum, believing that the formal appointment of commissioners would not be necessary; but that the object might be effected by the Indian agents, under the direction of the President.

To carry into effect the ultimate object of the resolution, and to bring the whole subject before the House, the committee report a bill, entitled 'A bill to extend the western boundary of the State of Missouri to the Missouri river.'

Amendment to be moved to the Indian appropriation bill, No. 70. 'For holding treaties with the Indian tribes, for the purpose
144 of extinguishing the Indian title to all lands lying between the State of Missouri and the Missouri river, two thousand dollars.' "

Mr. DAWSON: Defendant offers in evidence, appended to the foregoing report number three hundred and seventy-nine, copy of a bill entitled "A bill to extend the western boundary of the State of Missouri to the Missouri river," and asks that the same be marked "Exhibit G."

The said Exhibit G is in words and figures as follows, to-wit:

"A Bill to Extend the Western Boundary of the State of Missouri to the Missouri River.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That when the Indian title to all the lands lying between the State of Missouri and the Missouri river shall be extinguished, the jurisdiction over said lands shall be hereby ceded to the State of Missouri, and the western boundary of said State shall be then extended to the Missouri river: reserving to the United States the original right of soil in said lands, and of disposing of the same. Provided, That this act shall not take effect until the President shall, by proclamation, declare that the Indian title to said lands has been extinguished."

Mr. DAWSON: Defendant offers in evidence document number eighty-three, House of Representatives, Twenty-fourth Congress, Second Session, in a volume entitled "Executive Documents, Second Session, Twenty-fourth Congress, Volume Three, 1836-7," and offers in evidence all of page one, and the following page, number
145 two, and desires that it be marked "Exhibit H."

The said Exhibit H is in words and figures as follows, to-wit:

"24TH CONGRESS, 2nd Session. (Doc. No. 83.) Ho. of Reps. Executive.

Western Boundary of Missouri.

Message from the President of the United States, Transmitting

The copy of an act of the legislature of the State of Missouri, declaring the assent of that State to the act of Congress, entitled 'An act to extend the western boundary of the State of Missouri to the Missouri river.' Approved June 7, 1836.

To the House of Representatives of the United States:

I transmit to Congress, herewith, the copy of an act of the State of Missouri, passed on the 16th ultimo, expressing the assent of that State to the several provisions of the act of Congress entitled 'An act to extend the western boundary of the State of Missouri to the Missouri river,' approved June 7th, 1836. A copy of the act, duly authenticated, has been deposited in the Department of State.

ANDREW JACKSON.

Washington, January 17th, 1837.

An Act to Express the Assent of the State of Missouri to the Extension of the Western Boundary Line of the State.

146 Be it enacted by the General Assembly of the State of Missouri, as follows:

1. That the State of Missouri has, and by this act does declare her assent to the several provisions of the act of Congress, entitled 'An Act to extend the western boundary of the State of Missouri to the Missouri river,' approved the 7th of June, 1836, and does hereby accept the same.

2. The Governor of this State is authorized to transmit to the proper authority of the United States a copy of this act, duly certified under the great seal of state.

JOHN JAMESON,
Speaker of the House of Representatives.
FRANKLIN CANNON,
President of the Senate.

Approved: December 16, 1836.

LILBURN W. BOGGS.

I, Lilburn W. Boggs, Governor of the State of Missouri, do hereby certify that the foregoing is a true copy of 'an act to express the assent of the State of Missouri to an extension of the western boundary line of the State,' approved as set forth, December 16th, 1836.

In testimony whereof, I have hereunto set my hand, and caused the great seal of the State to be affixed. Done at the city of Jefferson, this nineteenth day of December, in the year of our Lord one thousand eight hundred and thirty-six, and of the independence of the

United States the sixty-first, and of the State of Missouri the seventeenth.

LILBURN W. BOGGS. [SEAL.]

By the Governor:

HENRY SHURLDS,
Secretary of State."

147 Mr. DAWSON: Defendant offers in evidence section thirty-three, of chapter thirty-six, on page two hundred and sixty-three of the Revised Statutes of the State of Missouri, printed under the superintendence of William Claude Jones, Commissioner, appointed in virtue of an act to provide for the election and compensation of a commissioner to superintend the printing of the revised laws, dated 1845, defining the boundaries of Platte County, and asks that the same be marked "Exhibit I."

The said Exhibit I is in the words and figures as follows, to-wit:

"SEC. 33. Platte.—Beginning at the southwest corner of Clay county (*a*); thence, with the western line of Clay and Clinton counties, (*b*) to the south-east corner of section thirty-three, township fifty-four, range thirty-three; thence west (*c*) to the Missouri river (*d*) and down the same, in the middle of the main channel thereof, to the beginning."

Mr. GREGORY: If the Commissioners please, we would like to reserve the right to object to this evidence until we have had an opportunity of examining the documents, to see whether they are authentic.

Com'r HAMILTON: You should have that.

Mr. GREGORY: We will not be technical about it; if there is any real reason for objecting, after examination, then we will make the objections.

Com'r GILMORE: They are introduced subject to your right to object after examining the exhibits.

Com'r GILMORE (to Mr. Dawson): Any objection they
148 make you will be given an opportunity to protect yourself against it.

Mr. DAWSON: In the same chapter thirty-six, of the same volume, of the statutes, on page two hundred and fifty-seven, we offer in evidence section twelve, defining the boundaries of Clay County, and we desire and ask that it be marked "Exhibit J."

The said Exhibit J is in words and figures as follows, to-wit:

"SEC. 12. Clay.—Beginning (*a*) in the Missouri river; thence north to the division line between ranges twenty-nine and thirty, and with said line to the north-east corner of section thirty-six, of township fifty-four, range thirty; thence west (*b*) to the old state line; thence (*c*) south to the Missouri river and down the same in the middle of the main channel thereof, to the beginning."

MR. DAWSON: The defendant offers in evidence section sixty-one of the same act, same volume of the statutes, approved March 28, 1845, defining the boundaries of Jackson County, page two hundred and seventy-two, and asks that the same be marked "Exhibit K."

The said Exhibit K is in words and figures as follows, to-wit:

"SEC. 61. Jackson.—Beginning in the Missouri river at the place where the western line of the state crosses it (in the middle of the

main channel thereof;) thence south to the line between townships forty-six and forty-seven; thence east with the said township line to the middle of range twenty-nine; thence north to (the mid-
149 dle of the main channel of) the Missouri river; thence up the same to the beginning."

MR. DAWSON: We offer in evidence section four, on page ninety-one, under the title "Amendments to the Constitution,"—under the heading "Constitution of the State of Missouri—Amendments," in volume one of the Revised Statutes of Missouri, 1855, purporting to be ratified at the session of 1834-5, and desire that it be marked "Exhibit L".

The said Exhibit L is in words and figures as follows, to-wit:

"SEC. 4. That the boundary of the State be so altered and extended as to include all that tract of land lying on the north side the Missouri river, and west of the present boundary of this State, so that the same shall be bounded on the south by the middle of the main channel of the Missouri river, and on the north by the present northern boundary line of the State, as established by the Constitution, when the same is continued in a right line to the west, or to include so much of said tract of land as Congress may assent. (*b*)."

MR. DAWSON: Defendant offers in evidence section twelve of an act defining the limits of the several counties in this state, on page four hundred and fifty-nine of the Revised Statutes of Missouri, 1855, defining the boundaries of Clay County, and desires that it be marked "Exhibit M".

The said Exhibit M is in words and figures as follows, to-wit:

150 "SEC. 12. Clay.—Beginning at a point in the middle of the main channel of the Missouri river, where the prolongation south of the line, between ranges twenty-nine and thirty, would intersect the same; thence north with said range line, to the northeast corner of section thirty-six, township fifty-four, range thirty; thence west with the subdivisional lines, to the old State line; thence south with said line, to the middle of the main channel of the Missouri river; thence down the Missouri, in the middle of the main channel thereof, to the place of beginning."

Mr. DAWSON: We offer in evidence section thirty-three of the same chapter, same volume of the statutes, and ask that it be marked "Exhibit N," on page four hundred and sixty-six.

Said Exhibit N is in words and figures as follows, to-wit:

"SEC. 33. Platte.—Beginning in the middle of the main channel of the Missouri river, at a point where a prolongation south of the old boundary line of the State would intersect the same; thence north with said boundary line, to the line run and marked by Matthew M. Hughes, under an Act of the General Assembly of 1838 and 1839; thence west with said line, to the middle of the main channel of the Missouri river; thence down said river, in the (middle of the) main channel thereof, to the place of beginning."

Mr. DAWSON: We offer in evidence section sixty five, same act, defining the boundaries of the County of Jackson, and desire that it be marked "Exhibit O."

151 Said Exhibit O is in words and figures as follows, to-wit:

"SEC. 65. Jackson.—Beginning in the middle of the main

channel of the Missouri river, at a point where the western boundary line of the State intersects the same; thence south, to the line between townships forty-six and forty-seven; thence east with the said township line, to the south-east corner of section thirty-three of township forty-seven, range twenty-nine, west; thence north with the subdivisional lines, to the middle of the main channel of the Missouri river; thence up said river, in the middle of the main channel thereof, to the place of beginning."

At this time, 12:25, the further hearing of testimony herein was adjourned until the hour of 2:00 p. m. this day.

Mr. DAWSON: Defendant offers in evidence sections one and ten of an act to organize the counties of Platte and Buchanan, and to define the boundaries of the same, being parts of page- twenty-three, twenty-four and twenty-five of the laws of the State of Missouri, published in 1838, approved December 31, 1838, and desires that sections one and ten be marked "Exhibit P."

The said Exhibit P is in words and figures as follows, to-wit:

"Be it enacted by the General Assembly of the State of Missouri, as follows:

SEC. 1. The territory west of Clay and Clinton counties, included in the following boundaries, shall compose a new county,
152 to be called Platte: Beginning at the southwest corner of Clay county, and running north, with the western boundary of said counties, a sufficient distance to a corner hereafter to be established by survey; and thence due west to the Missouri river; thence down the middle of the main channel of said river to the beginning, so as to include in said county of Platte four hundred square miles."

"SEC. 10. Immediately after the passage of this act, the Governor (is) authorized and required to appoint some suitable person, as surveyor, to ascertain, survey and establish the boundaries of said counties of Platte and Buchanan, agreeably to the provisions of this act."

Mr. GREGORY: It is understood these go in subject to our objection.

Mr. DAWSON: The defendant offers in evidence a copy of an act of the United States Congress, extending the western boundary of the State of Missouri to the Missouri river, and desires that it be marked "Exhibit Q". This is set out in the answer and cross-bill of the State of Kansas.

Said Exhibit Q is in words and figures as follows, to-wit:

"An Act to Extend the Western Boundary of the State of Missouri to the Missouri River.

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That when the Indian title to all the lands lying between the State of Mis-
153 souri and the Missouri river shall be extinguished, the jurisdiction over said lands shall be hereby ceded to the State of

Missouri, and the western boundary of said state shall be then extended to the Missouri river, reserving to the United States the original right of soil in said lands and of disposing of the same; provided, that this act shall not take effect until the president shall by proclamation declare that the Indian title to said lands has been extinguished, nor shall it take effect until the State of Missouri shall have assented to the provisions of this act."

Mr. DAWSON: Defendant offers in evidence section two of article eleven of the Constitution of the State of Missouri, as the same appears in Wagner's Missouri Statutes, volume one of the year 1872, and desires it to be marked "Exhibit R" (page 61).

Said Exhibit R is in words and figures as follows, to-wit:

"II. The State shall have concurrent jurisdiction on the river Mississippi, and on every other river bordering on the said State, so far as the said river shall form a common boundary to this State, and any other State which may be bounded thereby; and said river Mississippi, and the navigable rivers and waters leading into the same, whether bordering on, or within this State, shall be common highways, and forever free to the citizens of this State and the United States, without any tax, duty, impost, or toll therefor imposed by the State."

154 Mr. DAWSON: Defendant also offers in evidence sections thirteen, thirty-four, and seventy-three of chapter thirty-nine of the same volume, being, Wagner's Missouri Statutes, 1872, defining the boundaries of Platte, Clay and Jackson Counties, in the State of Missouri, and desires they be marked "Exhibit S."

The said Exhibit S is in words and figures as follows, to-wit:

"*Ibid*, SEC. 13–13. Clay.—Beginning at a point in the middle of the main channel of the Missouri river, where the prolongation south of the line between ranges twenty-nine and thirty would intersect the same; thence north with said range line, to the northeast corner of section thirty-six, township fifty-four, range thirty; thence west with the subdivisional lines, to the old State line; thence south with said line to the middle of the main channel of the Missouri river; thence down the Missouri, in the main channel thereof, to the place of beginning."

"*Ibid*, SEC. 34–34. Platte.—Beginning in the middle of the main channel of the Missouri river, at a point where a prolongation south of the old boundary line of the State would intersect the same; thence north with said boundary line to the line run and marked by Matthew M. Hughes, under an act of the General Assembly of 1838 and 1839; thence west with said line to the middle of the main channel of the Missouri river; thence down said river, in the middle of the main channel thereof, to the place of beginning."

"G. S., ch. 34, SEC. 73–73. Jackson.—Beginning in the middle of the main channel of the Missouri river, at a point where the

155 western boundary line of the State intersects the same; thence south, to the line between townships forty-six and forty-seven; thence east with the said township line, to the southeast corner of section thirty-three, of township forty-seven, range twenty-nine west;

thence north with the subdivisional lines, to the middle of the main channel of the Missouri river; thence up said river, in the middle of the main channel thereof, to the place of beginning."

Mr. DAWSON: Defendant offers in evidence section one of the Constitution of Missouri as it appears on page LV, Revised Statutes of Missouri, volume one, 1879, and desires that it be marked "Exhibit T."

The said Exhibit T is in words and figures as follows, to-wit:

"SECTION 1. The boundaries of the State as heretofore established by law, are hereby ratified and confirmed. The State shall have concurrent jurisdiction on the river Mississippi, and every other river bordering on the State, so far as the said rivers shall form a common boundary to this State and any other State or States; and the river Mississippi and the navigable rivers and waters leading to the same, shall be common highways, and forever free to the citizens of this State and of the United States, without any tax, duty, impost or toll therefor, imposed by this State."

Mr. DAWSON: Defendant offers in evidence sections 5177,
156 5198, and 5237 of chapter ninety-four of the Revised Statutes of Missouri, volume two, 1879, and desires that they be marked "Exhibit U."

The said Exhibit U is in words and figures as follows, to-wit:

"SEC. 5177. Clay.—Beginning at a point in the middle of the main channel of the Missouri river, where the prolongation south of the line between ranges twenty-nine and thirty would intersect the same; thence north with said range line, to the northeast corner of section thirty-six, township fifty-four, range thirty; thence west with the subdivisional lines, to the old state line; thence south with said line to the middle of the main channel of the Missouri river; thence down the Missouri, in the main channel thereof, to the place of beginning."

"SEC. 5198. Platte.—Beginning in the middle of the main channel of the Missouri river, at a point where a prolongation south of the old boundary line of the state would intersect the same; thence north with said boundary line to the line run and marked by Matthew M. Hughes, under an act of the general assembly of 1838 and 1839; thence west with said line to the middle of the main channel of the Missouri river; thence down said river, in the middle of the main channel thereof, to the place of beginning."

SEC. 5237. Jackson.—Beginning in the middle of the main channel of the Missouri river, at a point where the western boundary line of the state intersects the same; thence south, to the line between townships forty-six and forty-seven; thence east with the said
157 township line, to the southeast corner of section thirty-three of township forty-seven, range twenty-nine, west; thence north with the subdivisional lines, to the middle of the main channel of the Missouri river; thence up said river, in the middle of the main channel thereof, to the place of beginning."

Mr. DAWSON: Defendant offers in evidence part of volume fifty-two of the Missouri Appeal Reports, beginning on page two hundred and twenty-nine, being the case of Millard F. Cooley, appellant,

versus James F. Golden, *et al.*, respondents, and continuing to the bottom of that page, and all of pages two hundred and thirty, two hundred and thirty-two, two hundred and thirty-three, two hundred and thirty-four, two hundred and thirty-five and two hundred and thirty-six, and desires that it be marked "Exhibit V."

The said Exhibit V is in words and figures as follows, to-wit:

"MILLARD F. COOLEY, Appellant,
v.
JAMES F. GOLDEN ET AL., Respondents.

Kansas City Court of Appeals, January 2, 1893.

1. State Boundary—Platte Purchase Act—Missouri River.—The act of Congress of June 7, 1836, extending the Jurisdiction of the State of Missouri over the lands lying between its western boundary and the Missouri river carried the western boundary of the state to the center of the channel of the river.
2. . . . —Change of Channel—Of Bed.—When a river is declared to be the boundary between states, although it may change
158 imperceptibly from natural causes, the river as it runs continues to be the boundary; but, if the river suddenly change its course or de-ert it- original channel, the boundary remains in the middle of the deserted bed.
3. State Jurisdiction—Concurrent Over Missouri River—Not Over Deserted Bed.—The state of Missouri has concurrent jurisdiction over the entire channel of the Missouri river, while it forms a common boundary of this state and Nebraska, but when the river abandons its channel the jurisdiction extends only to the boundary line, the middle of the old channel before the change.
4. . . . —Forcible Entry—The concurrent jurisdiction over a river forming a common boundary is not believed to confer authority upon one state to bring forcible entry and ejectment for the recovery of land within the limits of the other.

Appeal from the Atchison Circuit Court. Hon. Cyrus A. Anthony, Judge.

Affirmed.

Lewis & Ramsay, for appellant.

(1) The court erred in refusing to give instruction number 4 to the effect that in the absence of other evidence the middle of the main channel would be presumed to be in the middle of the river bed, that is, half way between the Missouri and Nebraska shores, as they existed at time of cut-off. The center of the channel is the boundary. See act April 19, 1864, admitting Nebraska, 13 United States Statutes, 47; 2 Brightly's Digest, p. 340; Angell on Watercourses (Ed. 1869) sec. 10, p. 16, note 2; Angell on Water-
159 courses, sec. 101; Alabama *v.* Georgia, 23 How. 515; Missouri *v.* Kentucky, 11 Wall. 395; Jones *v.* Soulard, 24 How. 41; St. Louis *v.* Rutz, 138 U. S. 226-257; Smith *v.* Public Schools,

30 Mo. 290. Under all the evidence there is scarcely a question but that the land in controversy is on that half of the old bed lying on the Missouri side of the center of the river. (2) The court erred in not giving instructions 5 and 6, asked by plaintiff, for the reason that the State of Missouri had concurrent jurisdiction with the State of Nebraska over the whole of the old bed of the Missouri river. See act of Congress, March 6, 1820, authorizing admission of Missouri; Swearingen & Covill *v.* Steamboat, 13 Mo. 519; Sanders *v.* Anchor Line, 97 Mo. 26. See also constitution of Missouri, article 1, section 1. The reasons for this jurisdiction are, if possible, stronger than when the river ran there. The boundary line is more uncertain, and violations of law far more frequent in this old bed of the river than when the water ran there.

Malcolm & McKillop, for respondents.

(1) The middle of the channel is the boundary line between Missouri and Nebraska The main channel is the place where the water flows at ordinary stages, and does not include the flats and sandbars over which the water extends in times of high water. Alabama *v.* Georgia, 23 How. 505-515; Handley's Lessees *v.* Anthony, 5 Wheat. 375. The main channel according to the testimony was north of the lands in controversy in 1867, at the time of the cut-off. The center of that main channel was at that time the boundary between
Missouri and Nebraska. Constitution of Nebraska, art. 10;
160 Railroad *v.* Devereux, 41 Fed. Rep. 14; The Schooner Fame,
3 Mason, 147; Handley *v.* Anthony, 5 Wheat. 374; 7 Opinions Attorney General, 175. That was not changed by the cut-off of 1867. Missouri *v.* Kentucky, 11 Wall. 395; Angell on Watercourses (5 Ed.) sec. 57; Gould on Waters, sec. 159, p. 292; Holbrook *v.* Moore, 4 Neb. 437; Collins *v.* State, 3 Tex. App. 323; Trustees *v.* Dickinson, 9 Cush. 544; New Orleans *v.* United States, 10 Pet. 662; State *v.* Young, 46 Vt. 565. (2) The 'concurrent jurisdiction' named by appellant is over rivers, not dry land, and to that effect are the authorities he cites. The center of the main channel of the Missouri river as it was at the time of the 1867 cut-off is the boundary line between Missouri and Nebraska. This boundary is an imaginary line. Up to the line on one side is Missouri and on the other side is Nebraska. Missouri has no concurrent jurisdiction with Nebraska over the territory of that state nor has Nebraska concurrent jurisdiction with Missouri over the lands of the latter. Land Co. *v.* Emmerson, 38 N. W. Rep. 200; Gould on Waters, sec. 158; Pollard *v.* Hogan, 3 How. 212; 27 Fed. Dec., sec. 40, 41, 42, p. 987; Zinc & Iron Co. *v.* Canal & Banking Co., 15 Atl. Rep. 227; State *ex rel. v.* Railroad, 33 Fed. Rep. 752.

SMITH, *P. J.*:

This is an action of forcible entry and detainer which was brought before a justice of the peace of Atchison county.

By the act of congress, approved June 7, 1836, United States Statutes at Large, 34, entitled 'An act to extend the western boundary of the state of Missouri to the Missouri river,' it was provided that,
when the Indian title to all the lands lying between the State
161 of Missouri and the Missouri river should be extinguished, the jurisdiction over said lands should be thereby ceded to the

state of Missouri. It is to be observed that the act ceded the land between the old state line and the river, and the extension of the boundary was to the river, not to the bank, thus making the natural watercourse the boundary; and the general rules, construing such words of cession as shown by the adjudged cases, carry that boundary to the center of the channel. Benson *v.* Morrow, 61 Mo. 345; Jones *v.* Soulard, 24 How. 41; Howard *v.* Ingersoll, 13 How. 381; Railroad *v.* Devereux, 41 Fed. Rep. 14; Missouri *v.* Iowa, 7 How. 660. And this seems to have been the intention of congress, for it will be seen by reference to the act providing for the admission of the territory of Nebraska into the Union that one of the boundaries of the state so admitted should be from the junction of the Niobrara river down the middle of the channel of the latter river following the meanderings thereof, etc. 13 United States Statutes at Large, 47. It would be unreasonable to suppose that congress intended to limit the extension of the territorial jurisdiction of the state of Missouri to the bank of the Missouri, and thus leave a sort of neutral territory between the Missouri shore and the middle of the channel of the river over which neither states of Missouri nor Nebraska had jurisdiction.

The constitution of Missouri, section 1, article 1, declared that the boundaries of the state as heretofore established by law are hereby ratified and confirmed; so that it is not to be doubted that congress by the ceding act extended the northern boundary line of the state to the middle of the channel of the Missouri river, and from
162 thence down the river to the middle of the Kansas river. Act of Congress of March 6, 1820, for the admission of Missouri; Revised Statutes, 1889, 47. In the cession act of June 7, 1836, is embraced what is commonly known as the 'Platte purchase,' consisting of a number of counties, among which is Atchison, situate in the northwest corner of the state.

At the time of the cession and until the year 1867, the Missouri river in its course along the western boundary of Atchison county made a horseshoe-shaped bend, with toe to the east, and heel pointing to the west. During the spring of the last named year the river, during a great flood, changed its course by effecting a channel across the heel of the bend and thus abandoned its former channel around the bend. The bend becomes a lake and gradually filled up with sedimentary matter until it became solid land fit for tillage and pasture. The land, the possession of which is in dispute in this suit, is situate in the old abandoned bed of the river in this bend. The decisive questions in the case arise on the instructions given and refused by the court.

The theory of the plaintiff's instructions which were refused by the court was to the effect that if the lands in dispute were situate in the old bed of the river which had become dry on account of the change of its course by cutting off a bend on the Nebraska side and forming a new channel, then in that case it was not material on which side of the main channel of the old river bed the lands in dispute were situate. The theory of the defendant which was adopted by the court was that the ordinary boundary of Atchison county
163 where it borders on the Missouri river extended to the middle of the main channel of the river as the main channel ran or

was located in the year 1867 prior to the change or cut-off, and that, unless it was found the land in question was situate in Atchison county, the plaintiff could not recover. The defendant's theory further was that the boundary line of the State of Missouri at the location in question was the middle of the main channel of the Missouri river as the main channel ran before the cut-off in 1867. These theories are wholly irreconcilable. The jury found under the instructions that the land in dispute was not in Atchison county, and, as there was substantial testimony tending to establish that fact, the finding is conclusive upon us. It seems that the river by its changed course cut off a considerable area of land which was formerly on the Nebraska side, but is now on the Missouri side of it, so that the river as it runs along the western border of this area of cut-off land is wholly within the state of Nebraska.

It is not contended, as we understand it, that the change of the course of the river in 1867 effected a change of the boundary line between the two states as it was fixed in the ceding act, for, if it were, such contention could not be sustained, because it is plain to be seen that the allowance of such consequences might result most disastrously to the geography of the state. The law seems to be well settled that when a river is declared to be the boundary between states, although it may change imperceptibly from natural causes, the river as it runs continues to be the boundary. But, if the river should suddenly change its course or desert the original channel, the rule of law is, the boundary remains in the middle of the
164 deserted river bed. Iowa *v.* Nebraska, 143 U. S. 359; St. Louis *v.* Rutz, 136 U. S. 225; Missouri *v.* Kentucky, 11 Wall. 395; Butterworth *v.* Bridge Co., 123 Ill. 535; Holbrook *v.* Moore, 4 Neb. 437; Collins *v.* State, 3 Tex. App. 324; Gould on Waters, sec. 159

But the real question is whether the states of Missouri and Nebraska have concurrent jurisdiction over the old bed of the river just as was the case when the river ran there before 1867. The jurisdiction of this state over that part of the river which forms a common boundary of the states is concurrent. It extends not only to the middle of the channel but over the entire channel. Constitution, art. 1, sec. 1; Swearingen *v.* Steamboat, 13 Mo. 519; Sanders *v.* Anchor Line, 97 Mo. 26. But here there is no river, but in its stead is dry land upon which are cultivated fields and pastures. The physical conditions have been changed. Is the case different than if the boundary line between the two states had been located originally on dry land instead in the middle of the channel of the river? We think not. The concurrent jurisdiction of the states of Missouri and Nebraska under their enabling acts does not in any case extend beyond their common boundary, except when that boundary is the middle of the channel of the Missouri river. Congress has imposed this limitation upon its existence. It is difficult to see why it exists here any more than if the river had always run where it did after 1867. The reason for the grant of this concurrent jurisdiction, which is so well and forcibly expressed by Judge Barclay in 97 Mo., *supra*, lends no support to plaintiff's claim of concurrent

jurisdiction in this case. The conditions are wanting which
165 constitute the basis of this jurisdiction. The boundary line between the states is the middle of the former bed of the river, and to this line the jurisdiction of each extends, but the concurrent jurisdiction along there disappeared when the river did.

It is not believed that it was contemplated by Congress or the states that the grant of concurrent jurisdiction of the two states on the river authorized the bringing of an action of forcible entry and detained or of ejectment in this state for the recovery of lands situate anywhere within the territorial limits of Nebraska. We cannot sustain the theory of the plaintiff's instructions which were to that effect. We do not think that the elimination by the court of a part of the plaintiff's fourth instruction was harmful to him, in view of the issues submitted to the jury by other instructions and found adversely to the plaintiff.

The case was fairly submitted to the jury by the instructions of the court. The judgment seems to be for the right party and so will be affirmed. All concur."

Mr. DAWSON: Defendant offers in evidence a part of volume forty-one, Federal Reporter (File of the Kansas State Library), beginning on page fourteen, at the place entitled "St. Joseph & G. I. R. Co. *versus* Devereux, ex-Sheriff." continue for the rest of that page, and page fifteen, sixteen, seventeen, eighteen and part of page nineteen, to the end of said case, and desires that it be marked "Exhibit W."

The said Exhibit W is in words and figures as follows, to-wit:

166 "ST. JOSEPH & G. I. R. CO.

v.

DEVEREUX, Sheriff.

(Circuit Court, D. Kansas. December 30, 1889.)

1. Railroad Companies—Taxation—Bridges.—A railroad bridge, not constructed as a part of the road, and used for general purposes of travel, is subject to local taxation, and the return of the bridge to the railroad Assessors of the state as a part of the road's mileage does not exempt it from such taxation as an independent structure.
2. States—Boundary Line between Kansas and Missouri.—The act of Congress approved June 7, 1836, ceding to the state of Missouri the strip of land known as the 'Platte Purchase,' provided that 'when the Indian title to all the lands lying between the state of Missouri and the Missouri river shall be extinguished, the jurisdiction over said lands shall be hereby ceded to the state of Missouri, and the western boundary of said state shall be then extended to the Missouri river,' etc. Held, that by this act the western boundary of the state of Missouri was not fixed at the east bank of the river, but in the center of the channel of said river.

3. Same—Act of Congress.—That act is to be regarded not only as a grant, but as an act of a competent authority establishing the boundary line of a state.

In Equity. Bill to Enjoin Collection of a Tax.

A. L. Williams, for complainant.
J. L. Gilpatrick, for defendant.

BREWER, *J.*:

This is a bill, filed by complainant, to enjoin the collection of taxes on a bridge crossing the Missouri river at St. Joseph.
167 The entire bridge was assessed by the county authorities of Doniphan county as being an independent structure, and wholly within the limits of the county. The bridge was built under a special charter, but afterwards became the property of the railroad company, the complainant. Complainant returned the bridge to the railroad assessors of the state as a part of its mileage, and without in any wise specifying that it was a bridge. It cost over half a million dollars, is now worth over three hundred thousand, and is used not simply as a railroad bridge, but also for general travel. It crosses the Missouri river from the city of St. Joseph, Mo., to the Kansas shore.

Two questions are presented: First, Is it wholly within the county of Doniphan? And that depends upon where the boundary line between the states of Kansas and Missouri is,—whether in the center of the main channel or on the east bank of the river. Second. Did the return of this as a part of the railroad track exempt it from taxation as an independent structure in Doniphan county?

With respect to the latter question there can be little doubt. The bridge was not constructed as part of the railroad. It is a costly structure, used for purposes of general travel; and the fact that the railroad company has its rails upon and runs its cars across it does not destroy its original character as an independent structure. It is clearly subject to local taxation.

The first question is, however, one of difficulty. Historically, the original western boundary of the state of Missouri was defined by 'a meridian line passing through the middle of the mouth of the Kansas river, where the same empties into the Missouri river;
168 thence, from the point aforesaid, north, along the said meridian line, to the intersection of the parallel of latitude which passes through the rapids of the river Des Moines.' Act of March 6, 1820. This left a narrow strip between such western boundary and the Missouri river. At the session of 1834-35, an amendment of the constitution of Missouri was adopted, section 4 of which reads as follows:

'SEC. 4. That the boundary of the state be so altered and extended as to include all that tract of land lying on the north side of the Missouri river, and west of the present boundary of this state, so that the same shall be bounded on the south by the middle of the main channel of the Missouri river, and on the north by the present

northern boundary line of the state, as established by the constitution, when the same is continued in a right line to the west, or to include so much of said tract of land as Congress may assent.'

And by the act of Congress approved June 7, 1836, this strip above mentioned, known as the 'Platte Purchase,' was ceded to the state of Missouri. The language of the act is as follows:

'Be it enacted by the senate and house of representatives of the United States of America, in Congress assembled, that when the Indian title to all the lands lying between the state of Missouri and the Missouri river shall be extinguished, the jurisdiction over said lands shall be hereby ceded to the state of Missouri, and the western boundary of said state shall be then extended to the Missouri river, reserving to the United States the original right of soil in said lands, and of disposing of the same; provided, that this act shall not take effect until the president shall by proclamation declare that the Indian title to said lands has been extinguished; nor shall it take effect until the state of Missouri shall have assented to the provisions of this act.' 5 St. U. S. 34.

169 Now, the contention is that by this act the western boundary was fixed at the east bank of the river. This, I think, is a mistake; and that the center of the channel is the boundary line, and the limit of the cession made by this act. It will be seen that the petition was for a tract bounded by the middle of the channel of the Missouri river, and the grant of jurisdiction was over the lands 'between' the old state line and the 'Missouri river;' and this western boundary was 'extended to the Missouri river,' and this grant was made, and its boundary fixed, obviously, in response to the petition. Counsel for the defendant urge that this shall be taken as a grant from one proprietor to another, while to my mind it is to be regarded not only in the light of a grant, but also as an act, by competent authority, establishing the boundary line of a state, independent, in some respects, but within the general jurisdiction of the authority making the designation. It is true there is a cession of jurisdiction, and therefore something in the nature of a grant. So there is whenever any new state is carved out of the territories. The new political organization is granted jurisdiction over the prescribed territory; but, after all, the main idea is the governmental one,—the declaration of the boundaries of the new jurisdiction. It is true, here was a state already in existence, and jurisdiction over this territory was transferred to it, and therefore there is in it more of the nature of a grant; but, even in this case, it is also to be regarded as a governmental declaration of the boundary. It will be noticed that the cession is to the river, and not to the bank. The words are general. There are no special words of exception or limitation. In the case of Jones *v.* Soulard, 24 How. 41, the question was presented as to the eastern boundary of the corporate limits of the city of St. Louis. The calls for boun-

170 dary in the charter were:

'Beginning at Antoine Roy's mill, on the bank of the Mississippi; thence running sixty arpens west; thence south, on said line of sixty arpens, in the rear, until the same comes to the Barrieu

Donoyer; thence due south, until it comes to the Sugar Loaf; thence due east, to the Mississippi; from thence by the Mississippi, to the place first mentioned.'

And upon this the supreme court adjudged the boundary the center of the channel, saying, in the opinion:

'Many authorities resting on adjudged cases have been adduced to us in the printed argument presented by the counsel of the defendant in error, to show that from the days of Sir Matthew Hale to the present time all grants of land bounded by fresh-water rivers, where the expressions designating the water-line are general, confer the proprietorship on the grantee to the middle thread of the stream, and entitle him to the accretions. We think this, as a general rule, too well settled, as part of the American and English law of real property, to be open to discussion.'

In the case of Howard *v.* Ingersoll, 13 How. 381, where the question was as to the boundary between the states of Alabama and Georgia, Nelson, J., in a separate opinion, thus states the law:

'Where land adjoining a fresh-water river or above tide-water is described as bounded by a monument, whether natural or artificial, such as a tree or a stake standing on the bank, and a course is given as running from it up or down the river to another monument standing upon the bank, these words necessarily imply as a general rule that the line is to follow the river according to its meanderings and turnings, and the grantee takes to the middle of the river. Such is the uniform construction given to this description, where
171 the common law prevails. It has been repeatedly applied to grants abutting on the river Mississippi, the Missouri, the Hudson, the Connecticut, and other great rivers in the United States above tide-water. 3 Kent, Comm. 427-429, and notes; Ang. Water-Courses, (Ed. 1850,) c. 1.'

There can be no doubt as to the general doctrine; and the authorities cited in the briefs of counsel in 24 How., *supra*, show the application of that doctrine under a great variety of circumstances. The case of Howard *v.* Ingersoll, *supra*, although locating the boundary line on the bank rather than in the middle of the Chattahoochee river, still recognizes the general doctrine, and rests upon the specific language in the cession. The language there was as follows:

'West of a line beginning on the western bank of the Chattahoochee river, where the same crosses the boundary line between the United States and Spain; running thence up the said river Chattahoochee, and along the western bank thereof.'

And Justice Wayne, in delivering the opinion of the court, thus noticed the general rule, and the reason of its non-application in this case:

'If the language of the article had been, "beginning on the western bank of the Chattahoochee, and thence running up the river," and no more had been said, the middle thread of the river, ordinarily, and without any reference to the fact that Georgia was the proprietor of the river, would have been said to be the dividing line between the two states. But there is added: "Running up the said

river Chattahoochee, and along the western bank thereof." This last controls any uncertainty there may be; for, if the first call or object to locate the line is the bank of the river, it is plain that the western limit of Georgia, on and along the bank of the river,
172 must be where the bank and the water meet in its bed, within the natural channel or passage of the river. The words "along the bank," added to the words "on the bank," distinguished this case from all of those in which courts have had the greatest difficulty, where a line was to be fixed, when it is on the bank, without a call for the stream, or along the river, or up or down the river. * * * "Along the bank" is strong and definite enough to exclude the idea that any part of the river, or its bed, was not to be within the state of Georgia.'

As against this general rule and these authorities, defendant relies largely on the case of Handly's Lessee *v.* Anthony, 5 Wheat. 375. That case decided that—

'The boundary of the state of Kentucky * * * does not include a peninsular or island on the western or north-western bank, separated from the main-land by a channel or bayou, which is filled with water only when the river rises above its banks, and is at other times dry.'

It seems to have been assumed that the northern bank of the Ohio river was the boundary of the state of Kentucky; and the question decided was where the northern bank was. And yet there is, unquestionably, something in the opinion of the court which helps to sustain defendant's contention. The territory north of the Ohio was ceded by Virginia to the general government, and the description was, the territory 'situate, lying, and being to the north-west of the river Ohio;' and, in respect thereto, Chief Justice Marshall, speaking for the court, uses this language:

'When a great river is the boundary between two nations or states, if the original property is in neither, and there be no convention respecting it, each holds to the middle of the stream. But when, as in this case, one state is the original proprietor, and grants
173 the territory on one side only, it retains the river within its own domain, and the newly-created state extends to the river only. The river, however, is its boundary.'

Counsel say that was a cession from a state to the general government; this, a cession from the general government to the state; that, a cession of 'all north-west of the river;' this, of all between a fixed line and the river; and from this similarity insist that that case is decisive of this. That there is similarity, must be conceded; and yet there is the distinction suggested by me in the forepart of this opinion. One is only a cession,—a grant,—while the other is also a governmental designation of a boundary. Further, the language of the description is not identical. One is,—and this in that which is only a grant,—'territory north-west of the river;' and the chief justice holds that that grants nothing of the river; that the description is exclusive. At best, this is mere dictum; for the jurisdiction of Indian was sustained over the tract in question. Here the cession was to land between the old state line and the river and the exten-

sion of the boundary was to the river, thus making that natural water-course the boundary; and the general rules construing such words of cession, as subsequently affirmed by the supreme court in the cases cited *supra*, carry that boundary to the center of the channel. Beyond this are these minor considerations. In the case of Missouri *v.* Iowa, 7 How., 660, in which was decided a controversy between the two states as to their boundary, not involving the question here, the supreme court used this language in reference to this cession to the state of Missouri:

'In February, 1831, the state of Missouri, by a memorial from the legislature to Congress, petitioned the United States for an
174 addition of the country west of the line running from the mouth of the Kansas north, and between said line and the Missouri river, alleging that it was a small slip of land that had been acquired, by the treaty of June 3, 1825, from the Kansas Indians. The petition declared that the line from the mouth of the Kansas north was about one hundred mile- long; that the country was settled, and rapidly settling, to its utmost verge; and that, as the Missouri river was the only great highway of this region, and could not be reached through a country inhabited by Indians, and being without roads, a cession of it to that state was necessary and proper. June 7, 1836, Congress acceded to the request of Missouri, and granted to that state all jurisdiction over the lands lying between its then western line and the Missouri river; making the river the western boundary. But the accession was not to take effect until the Indian title to the country was extinguished.'

Of course, this is no more authoritative than the dictum of Chief Justice Marshall; and yet it shows that the state of Missouri sought the only water-course as the highway of its western border, and that Congress acceded to that request.

Again, in the act admitting the territory of Nebraska into the Union as a state, the description of its boundary seems to recognize the channel of the Missouri river as the north-west corner of the State of Missouri.

I need add nothing more to express the conclusions to which I have come. I think the center of the channel is the boundary line between the two states. The assessment of the bridge by the county of Doniphan was excessive, but the agreed statement of facts shows the exact proportion that is west of the center of the channel. The decree will therefore be that, upon payment within 60 days
175 by the complainant of that proportion of the entire tax which the length of that portion of the bridge in Kansas bears to the whole, an injunction will issue restraining the collection of the balance. Failing to make such payment, the suit will be dismissed."

176 Mr. DAWSON: We next offer in evidence the preamble to the Constitution of the State of Kansas, adopted at Wyandotte, July 29, A. D. 1859, and as the same appears at page thirty-four, section eighty-two of the General Statutes of Kansas of 1901, and ask that it be marked "Exhibit X."

The said Exhibit X is in words and figures as follows, to-wit:

"SEC. 82. We, the people of Kansas, grateful to Almighty God for our civil and religious privileges, in order to insure the full enjoyment of our rights as American citizens, do ordain and establish this constitution of the state of Kansas, with the following boundaries, to-wit: Beginning at a point on the western boundary of the state of Missouri, where the thirty-seventh parallel of north latitude crosses the same; thence running west on said parallel to the twenty-fifth meridian of longitude west from Washington; thence north on said meridian to the fortieth parallel of north latitude; thence east on said parallel to the western boundary of the state of Missouri; thence south with the western boundary of said state to the place of beginning."

Mr. DAWSON: Defendant offers in evidence sections fifteen hundred and four, fourteen hundred and eighty-five, fifteen hundred and thirty-five, fifteen hundred and ninety, and fifteen hundred and twenty-nine, chapter twenty-four of the General Statutes of Kansas of 1901 defining the boundaries of Doniphan, Atchison, Leavenworth, Wyandotte, and Johnson Counties in the State of Kansas, and desires that this exhibit be marked "Exhibit Y."

177 The said Exhibit Y is in words and figures as follows, to-wit:

"SEC. 1504—Doniphan—SEC. 22. The county of Doniphan is bounded as follows: Commencing at a point on the west boundary line of the state of Missouri, where it is intersected by the extended base line or north boundary of the state of Kansas; thence west with said base line, to the corner on said line between ranges eighteen and nineteen east; thence south with said range line, to the southwest corner of township four south, of range nineteen east; thence east with the township lines between townships four and five south, to the range line between ranges twenty and twenty-one east; thence south on said range line, to the middle of the main channel of Independence creek; thence down said creek in the middle of the main channel thereof, to the western boundary line of the state of Missouri; thence with said western boundary line of the state of Mis-

"1485—Atchison—SEC. 3. The county of Atchison is bounded as follows: Commencing at the southeast corner of Doniphan county; thence with the south boundary of Doniphan county, to the township line between townships four and five south; thence west with said township line between townships four and five south, to the range line between ranges sixteen and seventeen east; thence south with said range line, to the southwest corner of section nineteen, of township seven south, of range seventeen east; thence east with the section lines, to the intersection with the western boundary line of the state of Missouri; thence north with said western boundary line of the state of Missouri, to the place of beginning. (*Id.*, Sec. 4.)"

178 "SEC. 1535—Leavenworth—SEC. 52. The county of Leavenworth is bounded as follows: Beginning at the southeast corner of Atchison county; thence west with the south boundary of Atchison county, to the corner of sections twenty-one and twenty-

two, twenty-seven and twenty-eight, of township seven south, of range twenty-east; thence south with the section lines between the third and fourth tiers of sections, to the middle of the main channel of the Kansas river; thence down said Kansas river, in the middle of the main channel thereof, to the intersection with the range line between ranges twenty-two and twenty-three east; thence north on said range line, to the old Delaware reserve line, the same being the dividing line between the original Delaware reservation and Delaware trust lands; thence east with said reserve line, to the western boundary line of the state of Missouri; thence northerly with said western boundary line of the state of Missouri, to the place of beginning. (G. S. 1868, ch. 24, Sec. 39; Oct. 31.)"

"SEC. 1590—Wyandotte—SEC. 105. The county of Wyandotte is bounded as follows: Commencing at a point on the west line of the state of Missouri, opposite the mouth of the Kansas river; thence south on the west boundary line of the State of Missouri, to the south line of township eleven south, being the northeast corner of Johnson county; thence west on township line, to the middle of the main channel of the Kansas river, in range twenty-four east; thence up the said river, in the middle of the main channel thereof, to the intersection with the east line of range twenty-two east; thence north on said range line, to the old Delaware reservation lines, the
179 same being the dividing line between the original Delaware reserve and Delaware trust lands; thence east on said line, to the west boundary line of the state of Missouri; thence southeasterly with the said western boundary line of the state of Missouri, to the place of beginning. (*Id.*, Sec. 80.)"

"SEC. 1539—Johnson—SEC. 46. The county of Johnson is bounded as follows: Commencing at the point where the north line of township twelve south intersects the west boundary line of the state of Missouri; thence west on said township line, to its intersection with the main channel of the Kansas river in range twenty-four east; thence up said river, in the middle of the main channel thereof, to an intersection with the line between the second and third tiers of sections in range twenty-one east; thence south on section lines, to the corner of sections fourteen, fifteen, twenty-two and twenty-three, in township fifteen south, of range twenty-one east; thence east on section lines, to the western boundary line of the state of Missouri; thence north on said boundary line, to the place of beginning. (*Id.*, Sec. 33.)"

Mr. DAWSON: Defendant desires to offer certified copies of the correspondence file of the Governor's office of the State of Kansas, pertaining to a projected prize fight on the Missouri river, on an island near Kansas City, Kansas, and Kansas City, Missouri, and desires that it be marked "Exhibit Z."

Mr. GREGORY: The complainant objects to each and every part thereof, on the ground that they are incompetent, irrelevant, immaterial and hearsay.

Com'r HAMILTON: The objection will be overruled.

180 To which ruling of the Commissioner the complainant at the time duly excepted.

Mr. DAWSON: The defendants desires to withdraw Exhibit Z, for the time being, and offers in evidence section seventy-two hundred and five of the General Statutes of Kansas, of 1901, and desires that it be marked "Exhibit A-1."

The said Exhibit A-1 is in words and figures as follows, to-wit:

"SEC. 7205—Official correspondence—SEC. 7. The governor shall also keep a register of his official correspondence, including communications sent and received. Reference to originals received, and copies of those sent, shall be by number; and all communications shall be filed in the order in which they are numbered on such register. He shall keep a daily record of the business of his office. All executive messages and proclamations shall be recorded in a book, and signed by the governor. He shall keep a record of all requisitions for the extradition of fugitives from justice made or received by him, and of all executive warrants issued by him; and he shall keep all other records necessary to preserve the evidence of all public business in the executive office."

Mr. DAWSON: Defendant offers in evidence sections forty-eight hundred and twenty, forty-eight hundred and twenty-one and forty-eight hundred and twenty-two of the General Statutes of Kansas, of 1901, and desires that they be marked as Exhibit A-2.

181 Said Exhibit A-2 is in words and figures as follows, to-wit:

"SEC. 4820—Copies of record papers—SEC. 372. Copies of all papers authorized or required by law to be filed or recorded in any public office, or of any record required by law to be made or kept in any such office, duly certified by the officer having the legal custody of such paper or record, under his official seal if he have one, may be received in evidence with the same effect as the original, when such original is not in the possession or under the control of the party desiring to use the same."

"SEC. 4821—Statute books—SEC. 373. The printed statute books of this state or of the territory of Kansas, printed under authority, shall be evidence of the private acts therein contained."

"SEC. 4822—Copies of laws, etc.—SEC. 374. Copies of any act, law or resolution contained in the printed statute books of the state, and territories of the United States, purporting to be printed by authority, and which are now or may be hereafter deposited in the office of the secretary of this state, and required by law to be kept there, certified under the hand and seal of office of the secretary of this state, shall be admitted as evidence."

Mr. DAWSON: Defendant offers in evidence sections thirty hundred and eighty-four, and thirty hundred and eighty-five, of chapter twenty-five of the Revised Statutes of Missouri, 1899, and desires that they be marked as Exhibit A-3.

182 Said Exhibit A-3 is in words and figures as follows, to-wit:

"SEC. 3984. Printed statutes of this state evidence of private acts.—The printed statute books of this state, printed under its authority, shall be evidence of the private acts therein contained. (R. S. 1889, Sec. 4830*a*.)

SEC. 3085. Printed statutes of other states, evidence, when.—The printed statute books of sister states and the several territories of the United States, purporting to be printed by the authority of such states or territories, shall be evidence of the legislative acts of such states or territories. (R. S. 1889, Sec. 4831*b*.)"

Mr. DAWSON: Defendant offers in evidence the certified correspondence from the files of the office of the Governor of Kansas, pertaining to a projected prize fight, on an island in the Missouri river near Kansas City, Kansas, and Kansas City, Missouri, in the year 1906, marked "Exhibit Z."

Said correspondence, marked "Exhibit Z," is in words and figures as follows, to-wit:

"State of Kansas, Executive Department.

C. E. Denton, Secretary; J. T. Botkin, Ass't Secretary.

Office of Secretary of State.

TOPEKA, *Nov. 9th*, 1907.

I, C. E. Denton, Secretary of State of the State of Kansas, do hereby certify, that F. J. Funk is the duly qualified and acting Executive Clerk in the office of the Governor of the State of Kansas, and that the signature of the said F. J. Funk as it appears in the certificate hereto attached, is his own official signature signed with his own hand.

In testimony whereof, I have hereunto subscribed my name and affixed my official seal, the day and year first above written.

C. E. DENTON,
Secretary of State,

By ——— ———,
Ass't Sec'ty of State.

183 State of Kansas, Office of the Governor, Topeka.

E. W. Hoch, Governor.

Certificate.

I, F. J. Funk, Executive Clerk to the Governor of the State of Kansas, do hereby certify that I am the officer in charge of the files of the Governor's office in the State Capitol, at Topeka, Kansas, and that the attached documents are true and exact copies of the telegram received and on file in this office, and the carbon duplicates on file in this office of telegrams forwarded from this office, and true and exact copies of the letters on file in this office and true and exact carbon copies on file in this office of the letters forwarded from this office, the same being all the telegrams and letters on the subject of a projected prize fight on an island near Kansas City, Kansas, and Kansas City, Mo., which appear in the files of this office.

I further certify that the Charles Sessions, whose signature appears to some of the attached correspondence herein was then the

duly qualified and acting Secretary to the Governor of Kansas at the dates mentioned in said correspondence.

And I further certify that the C. M. Kellogg, whose signature appears to some of the attached correspondence herein, was then the duly qualified and acting confidential stenographer and Assistant Executive Clerk of the Governor of Kansas, at the dates mentioned in said correspondence.

Witness my hand and the seal of this office, at Topeka, Kansas, this 18th day of November, 1907.

[SEAL.] F. J. FUNK,
Executive Clerk.

184 Western Union Heading.

"Received at 621 Kansas Ave., Topeka, Ks.
27-Ks. Ly. W. 11-3—paid.

JEFFERSON CITY DEPOT, Mo., *Oct. 7th*, '06.

Hon. E. W. Hoch, Gov'r, Topeka, Kans.:

Missouri sheriffs bordering Missouri river were instructed ten days ago to prevent any prize fight on Missouri soil. They report they have done so and that no fight has taken place under Missouri jurisdiction, prosecuting attorney of Clay County, Missouri investigated the island and gives his opinion that it is entirely outside of Missouri jurisdiction. He also says that sheriff had a talk with sheriff of Wyandotte county, Kansas, last night and that Wyandotte sheriff refused to go to the island and co-operate with Missouri officials in suppressing fight claiming that he cannot go farther than the edge of the river, can you advise whether Kansas claims any ownership in this island.

JOS. W. FOLK, *Gov'r.* 120—P. M."

"State of Kansas, Office of the Governor, Topeka.

E. W. Hoch, Governor.

Telegram sent.

Samuel McConnell, Sheriff, Court House, Kansas City, Kansas:

A prize fight is advertised for an island on Missouri River Sunday. Use all the authority vested in you by law to stop it if it is attempted on the Kansas side of the island or on Kansas soil anywhere within your jurisdiction. You might consult with Platte County, Mo., sheriff on plan of co-operation.

E. W. HOCH, *Governor.*

185 "(Telegram sent.)

Hon. Joseph W. Folk, Governor, Jefferson, Mo.

I have instructed sheriffs of Wyandotte and Leavenworth Counties to prevent proposed prize fight Sunday on Kansas soil. Will you

please instruct sheriffs, Missouri sheriffs bordering Missouri river to co-operate with Kansas sheriffs and stop the fight should it be attempted on island in the Missouri river.

E. W. HOCH,
Governor of Kansas."

"State of Kansas, Office of the Governor, Topeka.

E. W. Hoch, Governor.

OCTOBER 12, 1906.

Mr. Samuel McConnell, Sheriff; Mr. P. F. Pocock, Deputy Sheriff, Kansas City, Kansas.

GENTLEMEN: The writer, H. H. Clark, dictates this from Governor Hock's office at the State Capitol, in Topeka.

My wife has just wired me that the prize fight on the Clark land in Wyandotte County, Secs. 26 and 27, is contemplated to be pulled off at 3 o'clock this coming Sunday. It will be impossible for me to be in Kansas City to have my men on the ground to assist.

I hereby authorize you to arrest any person you may find on the land for trespass, liquor selling, or Sunday desecration. I have fully satisfied the officers in charge that the land belongs to the Clark Estate and that we have had peaceable possession for 17 years and have been paying taxes to Wyandotte County for 19 years.

Thanking you, I remain,

Very truly yours,
(Signed) H. H. CLARK,
Per C. M. KELLOGG.

186 "State of Kansas, Office of the Governor, Topeka.

E. W. Hoch, Governor.

OCTOBER 12, 1906.

Mr. H. H. Clark, Kansas City, Kans.

MY DEAR SIR: Enclosed you will find a copy of the letter you dictated to me this afternoon. I have mailed the original to the Sheriff and Deputy Sheriff, after signing your name to the same. I attached your card to the letter as showing my authority to sign for you.

Very truly yours,
(Signed) C. M. KELLOGG."

"State of Kansas, Office of the Governor, Topeka.

E. W. Hoch, Governor.

OCTOBER 8, 1906.

Hon. Jos. W. Folk, Governor of Missouri, Jefferson City, Mo.

MY DEAR SIR: Replying to your telegram of October 7th I desire to say that the Sheriff of Wyandotte County and a force of deputies

went to the island in the Missouri River early Sunday morning and remained there all day; that the sheriff of Clay County, Missouri, did not show up, neither did the prize fighters.

The question as to which state has jurisdiction over the island has never been settled. However the sheriff of Wyandotte county made an investigation yesterday and discovered that every document showing the ownership or the leasing of the island has been recorded at Liberty, Mo. This would indicate that the owner
187 and the man occupying it believed that it is Missouri Territory.

Very truly yours,
(Signed) E. W. HOCH, *Governor.*

"State of Kansas, Office of the Governor, Topeka.

E. W. Hoch, Governor.

OCTOBER 16, 1906.

Hon. Joseph W. Folk, Governor of Missouri, Jefferson City, Mo.

MY DEAR SIR: Since he wrote you last week Governor Hoch has received some additional information concerning the island in the Missouri River oposite Kansas City, Kansas.

A man named Clark claims to own the most of it and says that his deeds are recorded in Wyandotte County. He doesn't claim ownership to that part of the island where the fight was to take place or where the dance hall is located. He says that is Government land.

However, somebody else claims to own it and to hold title recorded in Clay County, Mo. It is the lease of this part of the island that is also recorded in Clay County, Mo.

Very truly yours,
(Signed) CHAS. SESSIONS,
Secretary to the Governor."

"State of Kansas, Office of the Governor, Topeka.

E. W. Hoch, Governor.

OCTOBER 12, 1906.

188 Hon. Samuel McConnell, Sheriff, Kansas City, Kansas.

MY DEAR SIR: I don't like to bother you so much but Herbert H. Clark, who claims to own a part of that island in the river has written this office that those Kansas City sports are talking of pulling off that prize fight next Sunday on the island. Kindly watch it and stop it if it is attempted.

Very truly yours,
(Signed) CHAS. SESSIONS,
Secretary to the Governor."

"State of Kansas, Office of the Governor, Topeka.

E. W. Hoch, Governor.

OCTOBER 12, 1906.

Mr. Herbert H. Clark, care The Pioneer Linseed and Lead Company, Stock Yards Station, Kansas City, Mo.

DEAR SIR: Your letter of October 10th is at hand and in reply I desire to say that I have notified the sheriff of Wyandotte County to prevent the prize fight next Sunday if it is attempted.

Very truly yours,

(Signed) CHAS. SESSIONS,
Secretary to the Governor."

189 "State of Kansas, Office of the Governor, Topeka.

E. W. Hoch, Governor.

OCTOBER 8, 1906.

Mr. Samuel McConnell, Sheriff, Kansas City, Kans.

MY DEAR SIR: I want to thank your personally and officially for the prompt action which you took to prevent the advertised prize fight on the island in the Missouri River last Sunday.

Assuring you of my high personal esteem, I am,

Very truly yours,

(Signed) E. W. HOCH, *Governor.*"

Mr. GREGORY: The complainant renews his objection to this offer.

Objection overruled and exception saved.

Mr. DAWSON: That is all that I have today. I don't want to conclude yet. I am looking for some field notes relating to Platte County, and a map from Washington, and probably have one or two old lawyers of Kansas who have lived in that neighborhood, to show how it has been dealt with and treated, if they know, for many years, about this jurisdiction, and the same way on the Missouri side. That is what we are expecting to do.

Thereupon the further hearing of testimony herein by the Commissioners was adjourned to Friday, December 6, 1907, to be then resumed at the same place.

190 On the Sixth day of December, 1907, the further hearing of testimony herein was resumed at Room 618 Kansas City Life Building, Kansas City, Missouri, in the presence of the Commissioners. Mr. J. P. Coleman appeared on behalf of the defendant instead of Mr. Dawson, and Mr. McCamish appeared on behalf of the county of Wyandotte, State of Kansas; Mr. Gregory, Mr. Lake and Mr. Meriwether appearing for complainant.

Mr. COLEMAN: We first desire to offer in evidence the certified copy of an order of the County Court of Platte County, made at the May Term, 1839, in the matter of the application of Matthew M. Hughes, to survey boundary lines of Platte, Buchanan Counties, and the report of the survey, and ask that it be marked Exhibit A-4.

We also desire to offer a certified copy of a map of the Missouri River in the vicinity of Kansas City, Missouri, and Kansas City, Kansas, approved by the Secretary of War, A-gust 22d, 1904, to be marked Exhibit A-5.

FRANK P. SEBREE, a witness of lawful age, produced, sworn and examined on the part of the defendant, testified as follows:

Direct examination by Mr. MCCAMISH:

Q. Your name is Frank P. Sebree?
A. Yes, sir.
Q. How long have you resided in Kansas City, Missouri, Mr. Sebree?
A. Between eighteen and nineteen years.
Q. What have you been engaged in during that time?
A. I am a lawyer practising law here.
Q. Are you acquainted with the present location of the Missouri River north of the point where it intersects the Kaw,
191 and have you been acquainted with the location of its since your residence in the city?
A. You mean in the vicinity of the mouth of the Kaw?
Q. Yes.
A. Yes, sir.
Q. Do you know what has been the common understanding of the boundary line between the states of Kansas and Missouri, north of the confluence of the Kaw and Missouri Rivers?

Mr. GREGORY: Objected to on the ground that it is irrelevant and immaterial.

A. You mean among the people generally?
Mr. MCCAMISH: Yes, boundary lines between the state north of the mouth of the Kaw.
The COMMISSIONERS: Objection overruled, and exception allowed.
A. I think I do.
(Question read).
A. The Missouri River.

Cross-examination.

By Mr. GREGORY:

Q. If you ever have occasion, Mr. Sebree, to have the matter up, as a legal matter?
A. Only in the investigation of the title to what is known as the Clark land, I believe it is, which lies immediately in the bend of the River, northeast of Kansas City, Kansas. I speak of it as the H. Clark land—I don't know whether it is generally known as that or not. Mr. Clark had possession of it, and I believe the title to it is in his name, or in his wife's name, at least parts of it.
192 Q. Did you hear any considerable number of people state their understanding on that particular question?
A. No, sir, I don't know that I ever heard anybody say it.

Redirect examination.

By Mr. McCAMISH:

Q This Clark land you speak of, do you know where it lies with reference to Goose Island, in controversy in this case?

A. That is the first island north of the mouth of the Kaw, is it?

Mr. GREGORY: No, the first is Grand Island.

Q. Referring to Goose Island on Exhibit A-5—the question was, which way it is this Clark land lies from Goose Island?

A. The Clark land lay west and southwest from that, as I understood it. There seemed to be something of a channel at times, between Goose Island and the Clark land—whether that channel was there all the year, or not, I do not know.

Q. This land you speak of was the main land opposite Goose Island on the west?

A. Yes, sir.

Commissioner GILMORE: Mr. Sebree, you can make any explanation you want to.

Mr. SEBREE: In speaking of where I understood it—what was generally considered the dividing line between the states of Missouri and Kansas north of the Kaw, that is the Missouri River, I speak of that as I would on the same principle that I would as to the reputation of a person whose reputation I had never heard questioned, and whom I knew well—it has always been my understanding that the line was where it was stated generally to be, and never having heard it questioned, I make that answer referred to.

Witness excused.

193 JOHN A. HALE, a witness of lawful age, produced, sworn and examined on the part of the defendant, testified as follows:

Direct examination by Mr. McCAMISH:

Q. Please state your residence, Mr. Hale?

A. Kansas City, Wyandotte County, Kansas.

Q. How long have you resided in Kansas City, Wyandotte County, Kansas?

A. In Wyandotte County, thirty-eight years.

Q. During that time, what has been your occupation?

A. Well, since 1874, I have been practising law.

Q. Are you acquainted with the location of what is known as Goose Island, in the Missouri River, north and east of Kansas City, Kansas?

A. Yes, sir.

Q. Are you acquainted with the present location of the Missouri River north of the confluence of the Kaw with the Missouri?

A. Somewhat.

Q. And Goose Island?

A. Somewhat. I have not been over that of late years as much as when younger.

Q. You will please state, if you know, what has been, during these years you have resided in Wyandotte County, Kansas, the

common understanding, that is, what people generally understood, to be the boundary line between the states of Kansas and Missouri, north of the point where the Kaw River empties into the Missouri?

Mr. GREGORY: Objected to as incompetent, irrelevant and immaterial.

The COMMISSIONERS: Overruled.

A. The channel of the Missouri River.

Q. The main channel?

A. Yes.

Mr. GREGORY: That was not the question.

The WITNESS: It could be answered, yes, I do.

194 Q. Are you able to state, Mr. Hale, from your observation of the river, during these years, whether the present main channel is located to the eastward or to the westward of where it was located at the time you first moved to Wyandotte County?

A. At Goose Island?

Q. Yes, in this same vicinity from the mouth of the Kaw to Goose Island?

A. It is west—the main channel is east now of where it was, say, in 1870.

Q. What has been the tendency of the main channel during those years, say since 1870—in other words, has it always been in one direction to the eastward, or shifted east and west?

A. I think it has been eastward there at Goose Island, but below there, and nearer the mouth of the Kaw, it has been to the westward.

Witness excused.

GEORGE A. SCHREINER, a witness of lawful age, produced, sworn and examined on the part of the defendant, testified as follows:

Direct examination by Mr. MCCAMISH:

Q. What is your name?

A. George A. Schreiner.

Q. Where do you reside, Mr. Schreiner?

A. 442 North Fourth street, Kansas City, Kansas.

Q. How long have you resided in Kansas City, Kansas and vicinity?

A. Since 1857, between the 1st and the 10th of March, 1857.

Q. What was your business in 1857 and subsequent years?

A. I was a steamboat pilot, assistant steamboat pilot on the Lightfoot, owned by the Quindaro Town Company—the Lightfoot under Captain Morrison.

195 Q. And where did that boat ply—between what points?

A Started from St. Louis and landed here, and at Wyandotte, then at Quindaro. The boat was owned by the Quindaro Town Company.

Q. Do you recollect where the main channel of the Missouri River was located, north from the mouth of the Kaw up to the bend north of Kansas City, Kansas, at that time?

A. Yes, sir.

Q. Where was the main channel located with reference to where it is now—at that time, in 1857?

A. The mouth of the Kaw was out about where it now is—perhaps out a little farther yet—and then it run in a northerly direction until it got up towards the bend, where it turned kind o' westwardly, about where Goose Island is, where the river made a turn, in a more westerly direction.

Q. Where was the main channel at that time with reference to where Goose Island is at present?

A. I think right about where Goose Island is, just about the middle of the river, the main channel, right there.

Q. Which direction, if any, has the main channel shifted, since 1857 at Goose Island and vicinity?

A. Northeasterly.

Q. North and east?

A. There was no Goose Island—there was a main channel and about the middle of the river, then it changed northeastward—probably more eastward, then north.

Q. That has been the tendency of the channel since 1857 at that point?

A. Yes, sir.

Q. Shifting to the eastward?

A. It kept going until it cut a way a big corn field there.

Q. Where were those corn fields you speak of with reference to Goose Island?

A. Over where Grand Island is, up opposite Goose Island, a big cornfield.

196 Q. Those fields were cut away since 1857?

A. Yes, sir.

Q. What year did you make your last trip, if you recollect?

A. 1861.

Q. From 1857 until 1861, you ran on the river?

A. Yes, sir.

Cross-examination.

By Mr. GREGORY:

Q. In 1857, you say there was no Goose Island there?

A. No.

Q. Was the land solid, on the Kansas side, right up to the river?

A. Yes. There was a bar below, above the mouth of the Kaw River, there was a bar; and then it went on up, in 1857, went on up, no island was there, a bar above the mouth of the Kaw River. The Kaw River, when it would be up, it would back the Missouri up, and it would always form a bar there, and when the Missouri River cut on the other side——

Q. (Interrupting.) On the Kansas side?

A. On the other side of the river, this side now, the south side of the river.

Q. When the Missouri cut on which side?

A. When it cut on the northeast side, why, then the river kept cutting, making a long bend, and when it got down to about four or five blocks above the mouth of the Kaw there, it cut on this side where the Union Pacific roundhouse used to be.

Q. You mean cut on the Kansas side?

A. Yes, sir, when I saw, "this side," I mean the Kansas side. And then it kept cutting on down, and the more the river cut, it made a bend on the other side, the more it come across, on this side until it cut away in down to the mouth of the Kaw River, and from the mouth of the Kaw on down, made a great big bend down this way, cut into where—I forget what year, they commenced riprapping, sometime in 1870, commenced riprapping the bank below the
197 Kaw River, down from Armour's, and up and down there, they riprapped there to keep it from cutting any further, but it got in above the mouth of the Kaw until it got way in then two or three hundred feet of the main building line.

Q. Dow- right close to the mouth of the Kaw?

A. Yes, sir, cut clear down to where afterwards the Northwestern Road track was built, where they built the Northwestern Bridge. Then, when the Kaw River would rise and back water in the Missouri, and turn the current of the Missouri across, and then above, the Kaw River would always reform a bar, and that extended way up clear up to the foot of Goose Island, where Goose Island now is—fill up, *fill up*. Then, when the Kaw River would go down, and especially the Missouri River come with considerable height and force, it would follow that bend and cut that bar away again, and the next high water coming in the Kaw river, reform another bar, the way it kept on off and on ever since, until here when they commenced riprapping above Goose Island on the other side.

Q. (Interrupting.) On the north side?

A. Yes, sir, why, then the river took a more easterly direction, then Grand Island formed in there; where Grand Island formed, there was a great big bend, and the water just shot right across and over to the Wyandotte side and cut everything away there—cut all away where they are making that accretion, all the way down there, and in 1861, the last time I come down with the boat, and went up, why, Goose Island was a bar there—there was some willows and cottonwoods—small ones, growing there.

Q. Was the bar connected with the mainland on the Kansas side?

A. Yes, sir, with the main land.

Q. When did that channel on the Missouri River west of Goose Island form?—cut that through?

198 A. Every high water that come in the Kaw, it would create back water, and that helped the formation of the Goose Island, and then when that built up from year to year, when the Missouri River would come up, and the Kaw was not up, it overflowed and left sediment, and kept building up that bar, as the river cut over on the other side it formed that island, kept building it up from year to year, until it got up to where it now is, when it built up the island right in where the main channel used to be, why, sometime- the high water in the Kaw River would cut through, cut

that slough between what had formed as an island and this shore, and in the 1903 flood, when the Kaw River was so high, that left quite considerable sediment on this side of the river.

Q. On the Wyandotte side?

A. Yes, sir. Since that, I noticed, about six weeks ago, I was up to take a look at the lay of the land, I found that the Missouri River had cut considerable of a width, in cutting off the main shore on the Wyandotte side, cutting in there a perpendicular bank, and the bank caving, and also cut away on this side, on the inside of the Island, cutting away there, so that the channel through there—not the channel, but the shallow water that still comes through there, is considerable of a width now from what it used to be. The island had been cut away quite considerable too. It was wider in towards this shore.

Q. When that bar formed, on which afterwards became Goose Island, it formed right out from the mainland, did it, and was a wide bar connected with the mainland, does it?

A. Yes, but still there was some low part, where some water came through, and it came in kind of a—like this shape—where it was cutting that bar away, that bar, or Goose Island was holding its own where the willows and cottonwoods had grown—was holding
199 its own.

Q. A good part of the year, would it be this bar, would it be connected right with the mainland?

A. No, over to Goose Island?

Q. Yes.

A. No, there was some water running through there.

Q. There was some water running through there?

A. Yes, sir.

Q. But it was a mere shallow slough, was it?

A. Yes, sir, shallow water, no more than half knee deep.

Q. Haven't you seen it a good many times when it was perfectly dry, when the water was low?

Mr. McCamish: I think perhaps I will save time if we interpose an objection on behalf of the state of Kansas, that this is not cross-examination, and not to lead too far away.

The Commissioners: Objection overruled.

Exception by the defendant.

A. I say I don't know; I don't remember that I ever seen it perfectly dry. I was not always up every year, every season to notice.

Q. You were not?

A. No, not every year. I came up once in a while to notice it.

Q. Back in 1857, and for some years after that time, the mouth of the Kaw was considerably northeast of where it is now, wasn't it?

A. About the same direction, yes, northeast, rather more eastward than north. It makes a bend about like this, then comes out and runs then from the James street bridge, it runs in a more northeasterly direction.

Q. How far out was it at that time northeast of where it is now?

A. It was further than it now is—further out.

Q. Half a mile?

A. No.

Q. A quarter of a mile?

A. No, the Missouri River at that time followed that point on the other side, and all of that bend here, where they are making the accretion, that is on the other side of the Missouri River, was
200 through there.

Q. You mean where they are making the accretion on the south side of the Missouri River at Kansas City?

A. Yes, sir, and the Missouri River, the main current and channel was over beyond the draw pier of the draw bridge here, over northeast of the draw pier, and all of that bottom where they are making the accretion now, was mainland, on this shore, and farther out, if all that is now water in the Missouri River now, if that was all land and the Missouri River was run through where the bar is, the Missouri River would be about where it was in 1857, and cutting away on the other shore, there was no bar there.

Commissioner GILMORE: A bar on the north bank of the Missouri River opposite Kansas City above the bridge?

The WITNESS: Yes, sir.

Mr. MCCAMISH: I move to strike out all that part of the answer relating to the condition of the river outside of the boundaries in dispute.

The COMMISSIONERS: Motion to strike out overruled, and exception allowed.

Q. Do you recognize that map (shows map to the witness)?

A. Yes, sir, I recognize that.

Q. Just examine the course of the Missouri River from the mouth of the Kaw, both east and north, and see whether that represents the position of the Missouri River and the mouth of the Kaw as it was about 1857?

A. Well, it seems to me the mouth of the Kaw was farther out, farther over—out farther, here, in 1857.

Q. Otherwise, is the map all right as to the Missouri River, north of there?

A. I think that where Grand Island is here, where the river has cut away since that, but it was not so far over as this map represents, I don't think it was over, well, in 1857.

201 Q. 1857?

A. Yes, oh, yes, in 1857, it come down here about.

Q. Along the Wyandotte shore?

A. Yes, come down here, and it runs over on the other side where the point is where the riprapping has been done.

Q. You mean on the point northeast of the mouth of the Kaw, on the opposite side of the Missouri side, in there?

A. Yes, sir, the main channel, the main water course was over on the other side, and not until it had cut in here.

Q. Where Grand Island is?

A. Yes, Grand Island is right in here, about, not until it had cut in there a great bend, and from way up here, it cut that great

bend in there opposite Goose Island, and the more it cut in here, the more it come over on this side, and cut out away from here.

Q. From the mouth of the Kaw?

A. Yes, sir.

Q. This map I show you does not show any Goose Island or Grand Island either?

A. No, sir.

Q. I will ask you whether the Missouri River, as it is shown on this map, is the same as it was in 1857?

A. Now?

Q. No, does this map show how the river was in 1857 before Goose Island formed, and Grand Island?

A. I think it shows it along here; I think it does, in 1857.

Q. That is, along the line of where Goose Island is now, and Grand Island?

A. I think there is where it was in 1857, but it seems to me that the mouth of the Kaw was farther out at that time than this map shows—considerable farther out, and the main body of the Missouri River farther out, on that side.

Q. It was across on the other side, from the mouth of the Kaw?

A. Yes, sir, and run through where that bar is above the Hannibal bridge, that point of a bar comes in here, there is where the Missouri river runs through at that time;——

202 Q. (Interrupting.) You are now speaking of the course of the Missouri River about a mile east of the Kaw, the mouth of the Kaw for about a mile eastward from the mouth of the Kaw, the Hannibal bridge is——

A. (Interrupting.) Yes, this is eastward, eastward from the mouth of the Kaw.

Mr. GREGORY: We offer this map in evidence and ask that it be marked Exhibit A6.

Commissioner HAMILTON: It serves to illustrate your testimony.

Redirect examination.

By Mr. MCCAMISH:

Q. I want to ask one more question, Mr. Schreiner, you spoke about the river being cutting to the eastward, taking a cornfield up, in that bend, north and east of Goose Island?

A. Yes, sir.

Q. When you were running up the river?

A. Yes, sir.

Q. Was that cutting perceptible, or was it in other words, was it slow or fast?

A. It depended upon the stage of the river. If the river was very high, it did not cut so much.

Q. Did it cut each year?

Mr. GREGORY: We object to that, we don't think the rate of progress of the river at that period—more than twenty years after the point of time in controversy, would make any difference.

The COMMISSIONERS: Objection overruled.

A. Of course, that is owing to circumstances, according to the state of the river. If the river was at a certain stage, after there had been high water, and the bank soaked with water, then the river got down about one-half, where it got into the strata
203 of sand, and through the strata up above that, into those stratas of sand, where it would cut out, it fell down in great chunks, kept falling, when the river was at half stage. When it was real high, the water pressure and overflowing, the bottom water pressed against it, there was no cutting under the water like it would be in about half stage, getting down to where the sand strata is.

Witness excused.

The State of Kansas rests.

Thereupon the further hearing of testimony herein was adjourned to December 20th, 1907, at the same place.

On December 20, 1907, owing to inability of counsel to be present, the further hearing of testimony herein was adjourned to January 210, 1908.

204 On account of the inability of counsel to be present, and by agreement of the parties, the hearing which was to have been had on the 10th day of January, 1908, was continued until the 17th day of January, 1908, at the hour of ten o'clock a. m., at the office of Brown, Adams & Brown, 601 Kansas City Life building, in Kansas City, Missouri.

Pursuant to the above adjournment, on the 17th day of January, 1908, at the hour and place above referred to, the further taking of testimony herein was resumed before Honorable Clad Hamilton and Honorable Solon T. Gilmore, Commissioners.

The plaintiff appeared by Mr. H. M. Meriwether and Mr. Alfred Gregory; and the defendant appeared by Mr. John Dawson, Assistant Attorney General, and Mr. W. H. McCamish.

Thereupon, the following proceedings were had?

Mr. GREGORY: As a part of our rebuttal, I want to say that it has been agreed by counsel for both parties that Mr. William M. Paxton of Platte County, Missouri, is a man of over eighty years of age, an attorney at law, and was admitted to the bar of Western Missouri in 1839, and was for many years an abstractor and examiner of titles in Platte County, Missouri; that he is the author of voluminous history of Platte County, Missouri, entitled "The Annals of Platte County, Missouri;" that he would, if present, testify as follows: "I often talked to John Brassfield, and carried the
205 chain when the Hughes survey of 1839 was made. Brassfield always stated that they started at the same point that Applegate did for the southwest corner of Platte County, and meandered up the river to a point which they supposed would be the east line, cutting off four hundred square miles of territory."

Mr. DAWSON: The defendant waives the personal presence of Mr. Paxton, and waives the administration of the oath to him, but objects to the subject matter of this testimony, on the ground that it is incompetent, irrelevant and immaterial, and hearsay.

Commissioner HAMILTON: Objection overruled and excepted to by the defendant.

L. A. GOODMAN, of lawful age, being first duly sworn to testify the truth, the whole truth, and nothing but the truth, testified as follows:

Direct examination by Mr. GREGORY:

Q. State your name, and place of residence.

A. L. A. Goodman, 4000 Warwick boulevard, Kansas City, Missouri.

Q. How long have you lived in Kansas City, Missouri?

A. Forty-one years.

Q. What official position do you now hold?

A. I am secretary of the State Horticultural Society of Missouri, and have been for twenty-five years.

Q. You may state whether you are familiar with the growth of forest trees.

A. Yes, sir, it has been a part of my business and profession all my life. I have been in the nursery business and fruit business all my life, and examining for the growth of trees continuously, so as to see how rapidly the trees will grow, both in the forest and in the orchard. It has been part of my special work to make records of that kind.

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Q. Will you kindly state whether you made some experiments for the department of the United States, in the year 1870, regarding the growth of forest trees, and if so, what they were and what they disclosed, particularly with regard to the growth of cottonwood trees and sycamore trees.

A. Along about that time the department,—as I was connected with the State Horticultural Society at that time,—asked me about the growth of cottonwood trees up in the river bottoms. It seems they wanted to do some forestry work out in the western part of the country, and they wanted to know the growth of cottonwoods and sycamores out here, and as a part of that work asked me to examine some of the trees. I went down in the west bottom here, and with the permission of Mr. Houck, to whom the land belonged, we cut a few trees and examined them for their age and growth, to see how rapidly they had grown, different sized trees, from a foot and a half to two feet, something like that. We cut down half a dozen trees, sycamores and cottonwoods, among some of the others.

Q. What was the result of your experiment?

A. The largest growth we found,—we experimented both for the inches and age. The largest we found was an extraordinary growth. We found that the growth of the cottonwoods generally averaged from two-thirds to three-fourths of an inch per year in diameter. That varies, you know, very much, according to how the tree stands. If it stands in the forest where it is thick with underbrush and such, the caliber of the trees is much more slowly made than if it stands out by itself, as the top is much less, the caliber is made by having a leaf surface. In the thick forests the tree will grow much more slowly in caliber than if it stands out by itself, without anything to interfere with it. In one of these localities we

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found that extraordinary growth; in other localities it can as low as half an inch per year, up to three-quarters of an inch per year.

Q. Of what kind of trees are you now speaking?

A. Cottonwood and sycamore, the cottonwood especially. The cottonwoods were the ones they wanted examined, for they wanted to plant them out on the western plains of Kansas and Nebraska, and so forth.

Q. You say that the cottonwood tree which reached the extraordinary growth of one inch per year stood separate and by itself?

A. Well, it stood out partly separate. Of course, the west bottoms was all timber at that time, nearly all. It was out so it was not in the thick timber.

Q. What would you say about it having a favorable condition of growth?

A. Yes, sir, it was one of the favorable conditions, and it had a large top and not enough trees near it to shade it, and it had made an extraordinary growth.

Q. How would its location and the soil in which it grew compare, with regard to being favorable to growth, with what is known as the north bottoms, just north of Kansas City, Kansas?

A. Well, I think all of that river bottom where it is formed, of that leaf mold, the rich, black soil that has been deposited there by the river at different times, is very similar. It is very rich. That ground was down in the west bottoms, as we called it. We
208 used to go there to haul sand. It was a rich bottom there. It would make as rapid growth there as almost any other place along the Missouri river, I should think.

Q. The bottoms you speak of as the west bottoms are the bottom lands of the Kaw river, near its mouth, are they?

A. Yes, sir, directly across until you strike the Kaw river. It was just above where the old bridge used to be, is where we used to go in.

Q. Perhaps half a mile from the mouth of the Kaw?

A. Yes, sir, about that, I imagine.

Q. You have mentioned going there to haul sand. Did you mean to say that the soil was composed of sand where this tree was growing?

A. No, sir, that was in the Kaw river bottoms. We used to haul sand from the Kaw river, but it was down at the edge of the Kaw river.

Q. How about the soil where these trees were growing?

A. That was good, rich bottom soil. All of this west bottoms was.

Q. About the same as the soil in the north bottoms, north of Kansas City, Kansas?

A. Well, I have never been right in those bottoms to examine them closely, but I imagine those bottoms would be very much the same, although I have not been up there.

Q. You are familiar with the bottom lands of the Missouri river in and around Kansas City, are you, Mr. Goodman?

A. Yes, sir.

Q. And what is the general character of the soil?

A. The bottom land is very well adapted for tree growth. Trees will grow very rapidly and the soil is rich. While they are sandy, yet there is lots of mold and loam mixed in with it that makes
209 a tree grow very rapidly.

Q. Have you any other figures which you have gathered or compiled, bearing upon the growth of the cottonwood or the sycamore tree, which you can state to the court?

A. In all my experience and in all my examining of trees I find the cottonwood will average in caliber about from one half to three quarters of an inch, from two-thirds to three-quarters. That would be the general growth in caliber. In extraordinary cases it is sometimes one inch, and sometimes as low as two-thirds of an inch, but generally from two thirds to three-quarters of an inch. I have examined those trees a number of times and that is about the growth that we generally attribute to cottonwoods, that it will make in its timbered growth about two-thirds or three-quarters of an inch in diameter. In some places, if they are planted pretty thick, they will not make over half an inch.

Q. You mean per year?

A. Yes, sir.

Q. Have you an instance of a cottonwood which grew in the Missouri river bottoms, with you?

A. Yes, sir, I have a cut off of the end of a log that I made up here in Parkville, from the Missouri river bottoms here at Parkville College. (The witness here produced a cut from the end of a log.) I selected that because of the extraordinary growth. There is over half a- inch growth there. For some reason or another that log had some extraordinary cause, either in the branches just above it or something, that made it have such an extraordinary growth. Here at the side you get the growth, of all these years. You see they run half an inch or a little over. While this made an
210 extraordinary growth on this side (indicating on cut of wood), on this side it didn't. On this side it is less than half an inch. That would be an addition on each side of this. That was an extraordinary growth it made.

By Commissioner HAMILTON:

Q. Is that a cottonwood tree?

A. Yes, sir.

By Mr. GREGORY:

Q. Where was that tree grown?

A. Up in the river bottoms, up this side of Parkville.

Q. What is the age of that tree, as shown by counting its rings?

A. About twenty-six years.

Q. What is the diameter of the tree?

A. About thirteen inches this way, and a little more this way (indicating on cut of wood). This is the growth across here. Take this growth (indicating) and it is about nineteen.

Q. Have you any other figures from your governmental reports

or otherwise which show the average growth of cottonwood and sycamore trees?

A. Yes, sir, I have a few taken from the United States reports. One is made from Bolivar County, Mississippi, a cottonwood, ten years of age, eight inches; fifteen years, twelve inches; twenty years, fifteen inches; twenty-five years, eighteen inches; thirty years, twenty-one inches; and so on down, running up to ninety years. That is a cottonwood study made by the department. I have another one from Richmond County, Alabama; ten years, six and two-tenths inches; fifteen years, 9.6 inches; twenty-years, 12.6 inches; twenty-five years, 15.2 inches; and so on, running up to a hundred and twenty-five years, different growths.

Q. What else have you bearing upon this subject?

211 A. Our State Horticultural Society carried on a number of experiments at the experimental station at Columbia, Missouri, where a part of the work has been the growing of forest trees, as well as fruit trees, of which we have a number of trees growing there in a very rich piece of soil. I have this data from Professor J. C. Whitman, who is the horticulturist at the station. Shall I read anything about cottonwoods?

A. And sycamores.

A. We have one hackberry.

Q. We don't care about that.

A. Sycamore trees, fifteen years, average ten inches in diameter, two thirds inch per year. Cottonwood trees thirteen years old show an average diameter of thirteen and one-half inches, a trace over one inch per year. At twenty years old I think the average growth would fall below one inch per year.

Q. Have you other figures from governmental reports showing the growth of trees of this character in Nebraska?

A. Yes, sir, I have a circular from the Forest Service, from data in Dixon County, Nebraska, twenty-three years old, thirteen inches is the largest of the measurements. I selected the largest growth. In Illinois, in four counties in the bottom lands, the records made for these four counties of cottonwoods average about half an inch per year. This is from circular eighty-one, of the Forest Service.

Q. What kind of trees do those refer to?

A. Cottonwoods. Both of these refer to cottonwoods.

Q. How does the growth of the Sycamore compare with that of the cottonwood, Mr. Goodman?

A. Well, very nearly the same; not quite as large, but very nearly the same.

Mr. GREGORY: That is all.

Mr. DAWSON: The defendant objects to the testimony of
212 this witness as incompetent, irrelevant and immaterial, not responsive to any of the issues involved in this suit, and tending to incumber the record, and moves that it be stricken out.

Commissioner HAMILTON: Overruled and excepted to.

Further examination by Mr. GREGORY:

Q. Mr. Goodman, suppose that a sycamore tree were found growing in the north bottoms, north of Kansas City, Kansas, not far from the river, in the ordinary river bottom soil, or in good river bottom soil, such as exists there, and were found to be twenty-six inches in diameter, in your opinion what would be the age of that tree, if it stood in conditions favorable to its growth?

A. I should say it would be from thirty-two to thirty-six years old, counting those by three-quarters of an inch per year, in favorable location. It might be possible that a tree, if it was standing by itself and had nothing else near it, that tree might possibly grow in diameter one inch per year, but not probable in any timbered growth, for in order to make that growth it would have to have branches feeding it and a large top so as to feed the body of the tree. I have a maple tree in my yard planted thirty-eight years ago, and that tree is between twenty-nine and thirty inches in diameter, but nothing has ever stood near it. We have watered it continuously ever since it was planted. It was planted in an old chip pile and we have poured all sorts of slop in there and it has had an extraordinary growth, and has a spread of branches of eighty feet, and the tree is seventy
213 feet high, and that feeds the body and makes the body expand much more rapidly, and causes that extraordinary growth. So that I say it might be possible that the tree might be twenty-six years old, but in all probability that tree would grow about three-quarters of an inch a year, an- would be thirty-two to thirty-six years old.

Q. What would you say under the same conditions of a cottonwood?

A. The same thing.

Q. To turn to this sample of a tree grown in the Missouri river bottoms near Parkville. Parkville is but a few miles north of Kansas City, Kansas. Is that right?

A. Yes, sir, about ten miles.

Q. This sample cut from a cottonwood tree, which you show, in three-fourths of its circumference about a quarter of an inch to a third of an inch on each side of the center does it not, and in about one-fourth of its circumference a sort of excrescence in which it approximates about half an inch?

A. Yes, sir.

Mr. GREGORY: That is all.

Witness excused.

Mr. DAWSON: The defendant objects to this testimony as incompetent, irrelevant and immaterial, not responsive to any of the issues involved in this suit, tending to encumber the record, and moves to strike it out.

Commissioner HAMILTON: Overruled and exceepted to.

Mr. GREGORY: That is all the oral evidence we have, but Mr. Meriwether wishes to submit some extracts from books.

214 Mr. MERIWETHER: I wish to read in evidence a portion of the volume entitled "The Annals of Platte County, Missouri,

by W. M. Paxton." I will only read some extracts from it, and they are short and serve to connect up some of the testimony already introduced. I presume that the Supreme Court will want to know all of the history of the transaction, and while this testimony of course will be objected to as not entirely competent, I believe that the Commissioners might let it be introduced, subject to the objection, and the Supreme Court will doubtless decide whether or not they will give it effect.

Mr. DAWSON: You want it in, although it is incompetent?

Mr. MERIWETHER: This is a history, and we think the history, so far as it applies to the particular point, would be competent in evidence. We will introduce the title to show what it is. It is entitled, "Annals of Platte County, Missouri, from its exploration down to June 1, 1897; with genealogies of its noted families, and sketches of its pioneers and distinguished people. By W. M. Paxton of Platte City, Missouri, published in 1897." This book is written chronologically. I will read first under the heading of 1835, page thirteen, under the head "Annexation of the Platte Country": "At this time the western boundary of the State of Missouri was a north-and-south line running through the mouth of the Kansas River.
215 The territory lying west of the State line and east of the Missouri traversed by the Little Platte, was known as the 'Platte Country.' The Iowas and the Sacs and Foxes set claim to this land. Gen. Andrew Hughes was agent for these tribes, holding his headquarters at Agency, in what is now Buchanan County. By the treaty made with these tribes July 15, 1830, the Government was granted the privilege of locating other tribes temporarily on this territory. In 1832, it was offered to the Delawares, and refused by them, because there were no buffalo upon it. In 1833, the Iowas and Sacs and Foxes expressed a desire to sell their territorial rights, on account of the encroachments of the whites. In 1834, by the treaty of Chicago, a part of the Pottawatomie tribe was located, temporarily, in Platte County. This called forth from Senator Linn, of Missouri, the following letter to H. Ellsworth:

'WASHINGTON, *January* 23, 1835.

SIR: It has long been desired by the people of Missouri to have annexed to the State that portion of territory lying between the western boundary and the great river Missouri, for the purpose of preventing the location upon it of an annoying Indian population; and for the purpose of having points to receive their supplies, and to ship their produce, within a moderate distance from their homes, upon the frontier. The location of the Pottawatomies, by the treaty of Chicago, on this territory, interposes a barrier to the attainment of these objects so important to the welfare and tranquility of
216 the inhabitants of the western counties. Will you be so good as to furnish me your opinion of the propriety of ratifying that treaty, and the dangers of a collision between the two races, from placing the Indians between the white population and the Missouri River?

Very respectfully, L. F. LINN.'

Mr. Ellsworth, January 27, 1835, replied favorably to Senator Linn's suggestions, and advised the rejection of the Chicago treaty, and thus prevent the occupancy of the Platte Country by the Indians."

The next is under the head of "General Hughes and Annexation:" "In the summer of 1835, at a militia muster on Weekly Dale's farm, three miles north of Liberty, Gen. Andrew Hughes, agent of the Iowas, presented the matter of annexation to those present, and a committee consisting of D. R. Atchison, A. W. Doniphan, W. T. Wood, Peter H. Burnett, and Ed. M. Samuel, was appointed to prepare a memorial to Congress, in favor of extending the limits of the State to the Missouri, so as to embrace the Platte Country. The memorial was written by Judge Wood, and was numerously signed. But action had already been commenced by our Legislature. In 1834 and 1835, Article 2 of the State Constitution, was so amended as to embrace the Platte Country, with a proviso that it should not take effect until the assent of Congress is given. This assent was given by act of Congress, approved June 7, 1836, conditioned upon the extinguishment of the Indian title, and the acceptance of the terms by the State. This acceptance was given by the Legislature December 16, 1836."

217 On page twenty-five, under the heading "1839, Survey of the County": "The Governor appointed Matthew M. Hughes as surveyor, to run the line between Platte and Buchanan, so as to include 400 square miles. Mr. Hughes, assisted by James Brasfield, repaired to the southeast corner of the proposed county, and meandered the east bank of the Missouri River to a point at which a line running east to the Clinton County line would include exactly 400 square miles. No islands of the Missouri were embraced in this survey; nor did Applegate, in his subsequent survey, include any island. When the county was sectionized by Applegate, in 1840, it proved to be 412 square miles. Applegate's lines run about one-half degree east of north, and north of west, as compared with the surveys of the east and the north lines of the county. There is no copy of Hughes' survey found in Platte. I presume the original field notes are at Jefferson City."

Under the same year, 1839, on page twenty-seven, an- marked "June, Surveys Commenced": "June 4—Lisbon Applegate commenced his work of sectionizing the county. He started at the old State line, between townships 50 and 51. The work was finished in June, 1840. A certified copy of his field-notes, originally in two volumes of 1,100 pages each, is in the custody of the county surveyor, and is the 'Domesday Book' of Platte. Surveyor Applegate was experienced in his calling, and no errors have been detected in his work. He died, greatly honored and loved, in Chariton County, Mo., in January, 1875."

218 Mr. MERIWETHER: Now, I wish to read in evidence the treaty referred to in the Annals which I have read from, in the "Revision of Indian Treaties." The title of the book is "A Compilation of all the Treaties between the United States and the Indian Tribes now in force as laws. Printed at Washington at the Government's printing office in 1873."

On page four hundred and seven, under the head, "Ioways and Sacks and Foxes of the Missouri:" Articles of a treaty made and concluded at Fort Leavenworth, on the Missouri River, between William Clark, Superintendent of Indian affairs, on the part of the United States, of the one part, and the undersigned chiefs, warriors, and counsellors of the Ioway tribe and the band of Sacks and Foxes of the Missouri, (residing west of the State of Missouri,) in behalf of their respective tribes, of the other part. Article 1. By the first article of the treaty of Prairie du Chien, held the fifteenth day of July, 1830, (proclaimed February 24, 1831,) with the confederates tribes of Sacks, Foxes, Ioways, Omahaws, Missourias, Ottoes, and Sioux, the country ceded to the United States by that treaty is to be assigned and allotted under the direction of the President of the United States to the tribes living thereon, or to such other tribes as the President may locate thereon, for hunting and other purposes. And whereas it is further represented to us, the chiefs, warriors, and counsellors of the Ioways and Sack and Fox band aforesaid, to be
219 desirable that the lands lying between the State of Missouri and the Missouri River should be attached to and become part of said State, and the Indian title thereto be entirely extinguished; but that, notwithstanding, as these lands compose a part of the country embraced by the provisions of said first article of the treaty aforesaid, the stipulation thereof will be strictly observed until the assent of the Indians interested is given to the proposed measure. Now we, the chiefs, warriors, and counsellors of the Ioways and Missouri band of Sacks and Foxes, fully understanding the subject, and well satisfied from the local position of the lands in question, that they never can be made available for Indian purposes, and that an attempt to place an Indian population on them must inevitably lead to collisions with the citizens of the United States; and further believing that the extension of the State line in the direction indicated would have a happy effect, by presenting a natural boundary between the whites and Indians; and willing, moreover, to give the United States a renewed evidence of our attachment and friendship, so hereby for ourselves, and on behalf of our respective tribes, (having full power and authority to this effect,) forever cede, relinquish, and quit-claim, to the United States, all our right, title, and interest of whatsoever nature in and to the lands lying between the State of Missouri and the Missouri River, and do freely and fully exonerate the United States from any guarantee, condition or limitation, expressed or implied, under the treaty of Prairie du Chien aforesaid, or otherwise, as to the entire and absolute disposition of the said lands, fully authorizing the United States to so — with the same whatever shall seem expedient or necessary."

220 Mr. MERIWETHER: I do not believe the rest is material. It relates to other matters. That is all I care to read of it.

Mr. GREGORY: It is agreed by counsel for both parties hereto that if Daniel O'Flaherty were here, he would testify that he has been a surveyor in and about Kansas City, Missouri, for many years, holding office at various times as county surveyor, or like positions; that he has surveyed the original Sullivan line and knows that one

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of the original monuments placed and noted by said Sullivan as marking his said line is still to be found, and that said monument shows the Sullivan line as located in complainant's exhibit 8 and is located between the points on said line designated as "B" and "D."

Mr. DAWSON: The defendant in making this concession, to expedite the closing of this case, does not mean by this agreement to waive objections heretofore made to the competency of exhibit 8.

Mr. GREGORY: That is all the evidence we have.

The foregoing was all the evidence introduced in said hearing by either of the parties hereto.

221 Thereupon, on this January 17th, 1908, the hearing of matters pertaining to this hearing was adjourned to February 15, 1907.

On February 15, 1907, the meeting for the purpose of considering matters in connection with the record herein was adjourned by the commissioners to April 10, 1908.

On this April 10th, pursuant to adjournment by said commissioners the State of Missouri appeared by Hunter M. Meriwether, Esquire, its attorney, and the State of Kansas, appeared by John S. Dawson, Esquire, Assistant Attorney General, its attorney, and thereupon said attorneys and the commissioners examined and corrected the testimony and exhibits, and not having completed the work of assembling and binding the depositions for certification, the meeting for those purposes was adjourned to April 11, 1908, at ten o'clock a. m.

On April 11, 1908, pursuant to adjournment, came said commissioners and completed the work of examining the transcript of the testimony and exhibits and assembling the exhibits, and certified to the same.

222 STATE OF MISSOURI,
DEPARTMENT OF STATE.

I, John E. Swanger, Secretary of State of the State of Missouri, do hereby certify that I am the legal custodian of the records and plats pertaining to the original survey made by the United States Government, concerning the public lands of the State of Missouri, that the attached is a full, true and complete copy of the plat of Township 50 North, Range 33 West of the 5th Principal Meridian, as surveyed by Charles Powell, Deputy Surveyor in the month of June 1819, so far as the same pertains to the Old Western of Indian Boundary Line of the State of Missouri, as the same appears of record at page 64, in Township Plat Book No. 17, Missouri Surveys, as the same appears of record in my office.

In testimony whereof, I hereunto set my hand and affix the Great Seal of the State of Missouri. Done at the City of Jefferson this Fifth Day of October, A. D. Nineteen Hundred and Seven.

[SEAL.] JOHN E. SWANGER,
Secretary of State.

EXHIBIT 1.

(Here follows map marked "Exhibit 1.")

223 STATE OF MISSOURI,
DEPARTMENT OF STATE.

I, John E. Swanger, Secretary of State of the State of Missouri, do hereby certify that I am the legal custodian of the records and documents pertaining to the original Survey made by the United States Government concerning the public lands of the State of Missouri, that the foregoing and attached instrument is a true and exact copy of the United States Field of the Old Western or Indian Boundary Line of the State of Missouri, as surveyed by John C. Sullivan, Deputy United States Surveyor, made during the month of September, 1816, in so far as the same pertains to Mile No. 1, 2 and 3 of said Boundary Line in Township 50, North, Range 33 West of the 5th Principal Meridian, as fully as the same appears of record in my office.

In testimony whereof, I hereunto set my hand and affix the Great Seal of the State of Missouri. Done at the City of Jefferson, this Fifth day of October, A. D. Nineteen Hundred and Seven.

[SEAL.] JOHN E. SWANGER,
Secretary of State.

EXHIBIT 2. Clad Hamilton, Solon T. Gilmore, Commissioners.

224 Field notes of the survey of the "Old Indian Boundary," or the West boundar- line of the State of Missouri, North of the Missouri River, as surveyed by John C. Sullivan in the Month of September, 1816.

Beginning at a Cotton Wood opposite the mouth of the Kansas River, marked with 3 notches on the N. & S. sides, from which a Cotton Wood 24 inches diameter bears S. 48 E. 58 links and a Sycamore 8 inches diameter bears N. 59 E. 38 links, Thence

North Chains Along the Indian boundary Mile No. 1.

42.50 A Sycamore 18 inches diameter.

80.00 Set post corner to Mile No. 1 from which a Mulberry 18 inches dia. bears West 43 links and a Mulberry 12 inches diameter bears S. 29 E. 38 links.

This mile over rich Missouri Bottom, Timber Cotton Wood and Sycamore, Ugwth. papaw Bushes and vines.

North Chains Along Mile No. 2.

18.50 A Sluce, 10 Chains Wide, Runs West.

31.50 A Cotton Wood 15 inches diameter.

80.00 Set post corner to Mile No. 2 from which a Mulberry 6 inches dia. bears N. 55 W. 36 links and a Mulberry 4 inches diameter bears S. 22 E. 14 links.

This mile and the first near the banks of the Missouri River. Rich soil, timber as before.

North Chains
Along Mile No. 3.

65.00 Upper end of same Sluice, 9 chains wide, runs E.

80.00 Set post corner to mile No. 3 from which a Cotton Wood 18 inches diameter bears N. 34 W. 7 links and a Cotton Wood 15 inches diameter bears S. 55 E. 27 links.

Land & Timber & Ugth. as before, sill near the Bank of the Missouri.

September 4th, 1816.

225

STATE OF MISSOURI,
DEPARTMENT OF STATE.

I, John E. Swanger, Secretary of State of the State of Missouri, do hereby certify that I am the legal custodian of the records and documents pertaining to the original survey made by the United States Government concerning the public lands of the State of Missouri, that the foregoing and attached instrument is a true and exact copy of the United States field notes of the Old Western or Indian Boundary Line of the State of Missouri, as surveyed by Charles Powell, D. S., in the month of June, 1819, so far as the same pertains to the first tier of Sections East of said Boundary Line in Township 50 North Range 33 West of the 5th Principal Meridian, Missouri Surveys, as the same appears of record in my office.

In testimony whereof, I hereunto set my hand and affix the Great Seal of the State of Missouri. Done at the City of Jefferson this Fifth Day of October A. D. Nineteen Hundred and Seven.

[SEAL.] JOHN E. SWANGER,
Secretary of State.

EXHIBIT 3. Clad Hamilton, Solon T. Gilmore, Commissioners.

226 Field notes of the survey of the first tier of Sections East of the Old West Boundary of Missouri, as surveyed by Charles Powell, D. S., in the year 1819.

West Chains
Between Sections 3 & 10, T. 50 N. R. 33 W.

14.90 A Hackberry 12 inches diameter.

40.00 Set ¼ Section post from which a W. Oak 36 in. dia. brs. N. 25 E. 30 links and a Hackberry 8 in. dia. bears S. 50 W. 45 lks.

Timber Oak, Elm, Lynn, Hackberry &c. ungth. hazel pawpaw and vines, Land rolling good soil, fit for cultivation.

51.67 A Brook 18 links wide runs South.

67.00 Intersected the Indian Boundary line 22.18 lks. North of the post where set a post corner of sections 3 & 10 T. 50 N. R. 33 W. from which a Mulberry 10 in. dia. bears N. 55½ E. 43 links & a Do. same size bears S. 52 W. 40 lks. Timber as the last, Land hilly, not fit for cultivation.

South Chains — Between sections 10 & 11 T. 50 N. R. 33 W.

28.40 — An Ash 12 inches diameter

36.77 — down a perpendicular rock 10 feet.

40.00 — Set ¼ section post from which an ash 14 inches diameter bears N. 8 E. 23 lks. & an Elm 10 in. dia. bears S. 47 W. 33 lks.

Timber, Oak, Elm, Ash &c., Ugh th. hazel vines &c.

46.30 — Intersected the Missouri River where sets a post corner of sections 10 & 11 from which a Cottonwood 12 in. dia. brs. N. 55 E. 23 lks. & a Do. same size bears N. 33 W. 83 lks., thence across said river.

54.80 — Set a post corner of Sections 10 & 11 from which a Cottonwood 12 in. dia. bears S. 44 W. 88 lks. & a Do. 12 in. dia. bears S. 8 E. 95 lks.

80.00 — Set a post corner of sections 10, 11, 14 & 15 T. 50 N. R. 33 W. from which a Cottonwood 12 in. dia. bears N. 24 E. 33 lks. and a Sycamore 10 in. dia. bears S. 15 W. 44 lks., Timber, Cottonwood, ungth bottom Dogwood —— &c. Land level, good soil fit for cultivation.

West Chains — Between Sections 10 & 15 T. 50 N. R. 33 W.

18.82 — A Cottonwood 20 in. dia.

40.00 — Set ¼ Section post from which a Cottonwood 24 in. dia. bears N. 57 W. 5 lks. & a Box Elder 8 in. dia. bears S. 58 E. 12 lks.

53.25 — A Hackberry 14 in. dia.

63.70 — Intersected the Indian Boundary line 21.70 lks.

227 — North of the post where set a post corner of sections 10 & 15 T. 50 N. R. 33 W. from which a Cottonwood 50 in. dia. bears N. 45 E. 8 lks. & an Elm 10 in. dia. bears S. 55 W. 33 lks. Timber and land as the last.

South — Between Sections 14 & 15 T. 50 N. R. 33 W.

18.38 — A Cottonwood 18 in. dia.

40.00 — Set ¼ Section post from which a Cottonwood 15 in. dia. bears N. 70 E. 4 lks. & a Do. 12 in. dia. bears S. 35 W. 25 lks.

Timber and land as the last.

46.80 — Intersected the Missouri River where set a post corner of Sections 14 & 15 T. 50 N. R. 33 W. from which a Cottonwood 12 in. dia. bears N. 41 W. 17 lks. & a Do. 11 in. dia. bears N. 16 E. 33 lks.

Timber and land as the last.

June 6th 1819.

North Chains — Between Sections 14 & 15 T. 50 N. R. 33 W.

20.68 — A Lynn 12 in. dia.

21.72 Intersected the Missouri River where set a post corner to sections 14 & 15 T. 50 N. R. 33 W. from which a Locust 15 in. dia. bears N. 65 E. 10 lks. & a Box Elder 10 in. dia. bears S. 29½ W. 44 lks.

Timber and land as the last.

West Chains Between Sections 15 & 22 T. 50 N. R. 33 W.

10.84 A Lynn 24 in. dia.

40.00 Set ¼ section post from which a box elder 8 in dia. bears N. 36 E. 33 lks. & a Locust 15 inches dia. bears S. 31 W. 20 lks.

Timber and land as the last.

49.46 Intersected the Missouri River where set a post corner of Sections 15 & 22 T. 50 N. R. 33 W. from which an Elm 12 in. dia. bears S. 32 W. 15 lks. & an Ash 24 in. dia. bears N. 42 E. 26 lks.

Timber and land as the last.

South Chains Brtween sections 22 & 23 T. 50 N. R. 33 W.

29.25 A Locust 24 in. dia.

40.00 Set ¼ Section post from which a Hackberry 18 in. dia. bears N. 44 W. 33 lks. & a Red bud 8 in. dia. bears S. 50 E. 24 links.

Timber, Elm, Locust, Hackberry, Sycamore &c. ungth pawpaw, rushes bottom Dogwood &c.

Land level, good soil, fit for cultivation.

51.50 A Pecan 15 in. dia.

228

80.00 Set a post corner of Section- 22, 23, 26 & 27 T. 50 N. R. 33 W. from which a Sycamore 36 in. dia. bears N. 40 E. 33 lks. & a Cottonwood 50 in. dia. bears S. 40 E. 20 lks.

Timber & Land as the last.

West Chains Between Sections 22 & 27 T. 50 N. R. 33 W.

18.30 A Sycamore 36 in. dia.

40.00 Set ¼ Section post from which a Hackberry 12 in. dia. bears N. 19 W. 44 lks. & a Sycamore 40 in. dia. bears S. 51 E. 46 lks.

Timber and land as the last.

66:64 Intersected the Indian Boundary Line 20.18 lks. North of the post where set a post corner of Sections 22 & 27 T. 50 N. R. 33 W. from which an Ash 12 in. dia. bears S. 35 E. 32 lks. & a Cottonwood 36 in. dia. bears N. 33 W. 16 lks.

Timber and land as the last.

Commenced at the boundary line on an Island, running North 78 E. up the river 41.78, thence N. 70 E. 6.30, thence N. 64.30 E. 7.80, thence N. 58 E. 9.85 thence 49.30 E. 34 thence N. 54 E. at 4.00 intersected the line between section- 14 and 15 T. 50 N. R. 33 W. Thence N. 52 E.

3.50 thence N. 45 E. 5.34 thence N. 33.30 E. 8.25 thence N. 23 E. 10.24 thence N. 10 E. 11.70 thence N. 13 W. 5.14 thence N. 5 W. 5.00 thence N. 4 W. 1.15 thence N. 21 W. at 2.24 intersected the line between sections 11 and 14 T. 50 N. R. 33 W. 13.00 thence N. 34 W. 10.00 thence N. 38.30 W. 7.34 thence N. 47 W. at 1.48 intersected the line between sections 10 and 11 T. 50 N. R. 33 W. thence N. 38 W. 3.00 thence N. 44 W. 5.30 thence N. 54 W. 8.50 thence N. 68 W. 18.75 thence N. 79.30 W. 15.60 thence N. 87 W. 12.60 thence S. 78 W. 11 intersected the boundary line. Commencing at the boundary line running N. 83.30 East down a slough of the Missouri River 4.68 lks. thence S. 89 E. 8.55 thence N. 84 E. 10.40 thence S. 81 E. 7.20 thence S. 88.30 E. 5.94 thence S. 80 E. at 1.03 a creek 100 lks. wide 2.13 thence S. 70 E. 4.59 thence S. 60 30 E. 8.30 thence S. 33.30 E. 1.66 thence S. 50 E. 21 intersected the line between section- 10 and 11 T. 50 N. R. 33 W. 30.18 thence S. 30 E. 6.80 thence S. 34 E. 13.80 thence S. 19 E.
9.70 thence S. 11.30 E. at 1.93 intersected the line
229 between section- 11 and 14 T. 50 N. R. 33 W. 10.40
thence S. 6.20 lks. thence S. 1 W. 5.50 thence S. 15 W. 18.17 thence S. 43 W. 5.70 thence S. 30 W. 9.08 thence S. 50 W. 10.14 lks. thence S. 75 W. 2.70 thence S. 60 W. 70 intersected the line between section- 14 and 15 T. 50 N. R. 33 W. thence S. 57 W. 17.17 thence S. 63 W. 9.84 thence S. 68 W. 9.75 thence 70 W. 7.95 thence S. 75 W. 4.70 intersected the line between section- 15 and 22 T. 50 N. R. 33 W. thence S. 81 W. 2.94 thence S. 86 W. 2.36 thence S. 82 W. intersected the boundary line.

230

STATE OF MISSOURI,
DEPARTMENT OF STATE.

I, John E. Swanger, Secretary of State of the State of Missouri, do hereby certify that I am the legal custodian of the records and plats pertaining to the original survey made by the United States Government, concerning the public lands of the State of Missouri, that the attached is a full, true and complete copy of the Plat of Township 50 North, Range 33 West of the 5th Principal Meridian, as surveyed by Lisbon Applegate, D. S., in April 1840, so far as the same pertains to the Old Western or Indian Boundary Line of the State of Missouri, as the same appears of Record in Plat Book 27 at page 31, Township Plats of Missouri Surveys, as the same appears of record in my office.

In testimony whereof I hereunto set my hand and affix the Great Seal of the State of Missouri. Done at the City of Jefferson, this Fifth day of October A. D. Nineteen Hundred and Seven.

[SEAL.] JOHN E. SWANGER,
Secretary of State.

EXHIBIT 4. Clad Hamilton.

(Here follows map marked Exhibit 4.)

MAPS

TOO

LARGE

FOR

FILMING

231 STATE OF MISSOURI,
DEPARTMENT OF STATE.

I, John E. Swanger, Secretary of State of the State of Missouri, do hereby certify that I am the legal custodian of the records and documents pertaining to the original survey made by the United States Government concerning the public lands of the State of Missouri, that the foregoing and attached instrument is a true and exact copy of the United States field notes of the survey of the old Western or Indian Boundary Line of the State of Missouri, surveyed by Lisbon Applegate in the month of April 1840, so far as the same pertains to Township 50 North, Range 33 West of the 5th Principal Meridian, Missouri Surveys, as the same appears of record in my office.

In testimony whereof, I hereunto set my hand and affix the Great Seal of the State of Missouri. Done at the City of Jefferson, this Fifth day of October, A. D. Nineteen Hundred and Seven.

[SEAL.] JOHN E. SWANGER,
Secretary of State.

EXHIBIT 5. Clad Hamilton, Solon T. Gilmore, Commissioners.

232 Field notes of the Survey of the "Old Indian Boundary," or the Western boundary of the State of Missouri, as surveyed by Lisbon Applegate, D. S., in the month of April, 1840.

I now commence at the corner to fractional sections 3 & 10 (Township 50 North Range 33 West of the 5th principal Meridian) on the Old West Boundary line of the State of Missouri & run thence

South Chains
Along said line.

6.00 Line Creek 70 links Wide, runs S. E.

32.50 the creek, runs southwest.

65.25 A Sycamore 30 inches diameter on the left bank of the Missouri River, which runs S. E. mark the tree for fractional Section 10 from which I now meander up stream along the left bank of the Missouri River, in fractional Section 10 as follows,

N. 25 W. 20.00 chains, thence,

N. 31 W. 8.25 " to the corner to fractional sections 9 & 10.

April 10, 1840.

233 STATE OF MISSOURI,
DEPARTMENT OF STATE.

I, John E. Swanger, Secretary of State of the State of Missouri, do hereby certify that I am the legal custodian of the records and plats pertaining to the original survey made by the United States Government, concerning the public lands of the State of Missouri, that the attached is a full, true and complete copy of the plat of Township 50 North Range 33 West of the 5th Principal Meridian,

as surveyed by John Lampton, Deputy United States Surveyor, made in the month of December 1846, so far as the same pertains to the old Western or Indian Boundary Line of the State of Missouri as the same appears of record at page 67 of Township Plat Book 48 Missouri Surveys, as the same appears of record in my office.

In testimony whereof, I hereunto set my hand and affix the Great Seal of the State of Missouri. Done at the City of Jefferson this Fifth day of October A. D. Nineteen Hundred and Seven.

[SEAL.] JOHN E. SWANGER,
Secretary of State.

(Here follows map marked Exhibit 6.)

MAPS

TOO

LARGE

FOR

FILMING

234 STATE OF MISSOURI,
DEPARTMENT OF STATE.

I, John E. Swanger, Secretary of State of the State of Missouri, do hereby certify that I am the legal custodian of the records and documents pertaining to the original survey made by the United States Government concerning the public lands of the State of Missouri, that the foregoing and attached instrument is a true and exact copy of the United States field notes of the Old Western or Indian Boundary Line of the State of Missouri, as surveyed by John Lampton, Deputy United States Surveyor, in the month of December 1846, in Township 50 North, Range 33 West of the 5th Principal Meridian as the same appears of record in my office.

In testimony whereof, I hereunto set my hand and affix the Great Seal of the State of Missouri. Done at the City of Jefferson this Fifth day of October A. D. Nineteen Hundred and Seven.

[SEAL.] JOHN E. SWANGER,
Secretary of State.

EXHIBIT 7. Clad Hamilton, Solon T. Gilmore, Commissioners.

235 Field notes of the Survey of the "Old Indian Boundary," or the Western Boundary of the State of Missouri, as surveyed by John Lampton, D. S., in the month of December, 1846.

South Along the former West boundary of the State of Missouri, through Section 10 T. 50 N., R. 33 W.

Chains
7.30 Line Creek 50 links wide, runs S. E.
22.12 I examine for the 3rd mile point & cannot find it.
32.10 Line Creek, 50 links wide, runs S. 60 W.
63.55 Intersected the left Bank of the Missouri River, where set a post from which post I run S. 25 E. 27 links to the post set a 20.50 chains N. 25 W. from the corner to fractional Sections 10 & 15.

From the examinations and surveys which I have made I am of opinion there is no unsurveyed lands West of fractional Sections 10 & 15. The bank of the River has fallen in considerably in the last few years, and the prospect is very fair for it to continue to fall in.

December 14, 1846.

From the corner to fractional Sections 3 & 10 on the Old West Boundary I run

South with the old marked line.

Chains
28.18 Set a post on the left bank of the slough for corner to fractional Section 10 Township 50 North Range 33 West of the 5th principal Meridian from which post a Cotton Wood 14 inches diameter bears S. 80 W. 13 links and a

Willow 12 inches diameter bears N. 7½ E. 69 Links distant. From which corner I continue South with the old marked line—(which is very hard to find) and at—

60.50 Intersect the left bank of the Missouri River where set a post for corner to fractional Section 10 from which post a Cotton Wood 48 inches diameter bears East 10 links and a Cotton Wood 40 inches diameter bears N. 3 W. 120 links distant.

From said corner to fractional Section 10 I run down stream with the meanders of the *of the* left bank of the Missouri River along fractional Section 10 as follows viz:

S. 25 E. 23.00 to the corner to fractional Sections 10 & 15 on the left bank of the Missouri River.

236 From the corner to Sections 14, 15, 22 & 23 I run

West Between Sections 15 & 22 Township 50 North Range 33
Chains West of the 5th principal Meridian.

48.00 Intersected the left bank of the Missouri River where set post for corner to fractional Sections 15 & 22 from which post an Ash 24 inches diameter bears N. 40 E. 30 links.

From which corner I run down stream with the meanders of the left bank of the Missouri River along fractional Section 22 Township 50 North Range 33 West of the 5th Principal Meridian
as follows viz:

S. 8 W. 31.00 chains, thence
S. 37 W. 24.00 " set a post from which I run
South along the old West boundary of Missouri,—
Chains

30.00 Set a post and examine for the corner to fractional Sections 22 & 27 which I am not able to find—I therefore run from the corner to fractional Sections 22, 23, 26 & 27—(which corner I find to be a Sycamore 40 inches diameter bears N. 40 E. 33 links and a Cotton Wood 50 inches diameter bears S. 41 E. 20 links—(the original Witness trees)

West between Sections 22 & 27 Township 50 North Range 33 West of the 5th principal Meridian.

40.14 A point 4 links South of the Section corner.

66.78 A point 19 links South of the corner to fractional sections 22 & 27 on the old West boundary of Missouri, where set a post from which corner post an Ash stump 14 inches diameter bears S. 35 E. 32 links (the stump is plainly and properly marked with a marking iron—the *the* marks are nearly covered up by sand,) and a Cotton Wood 36 inches diameter bears N. 33 W. 19 links, the marks are entirely covered over—the tree is now dead—I mark a Box Elder 10 inches diameter bears S. 5 E. 17 links and a Sycamore 16 inches diameter bears N. 32 E. 45 links.

I now run from said corner N. 80 W. 27 links to the post set at 30.00 chains running South along the old West line of Missouri.

From the corner to fractional Sections 22 & 27 on the former West Boundary of Missouri I run

237

South with the old marked line of the West boundary of Missouri.

Chains

19.61 A Cotton Wood 48 inches diameter which I mark for corner on the Left Bank of the Missouri River, from which a Sycamore 20 inches diameter bears N. 16 E. 55 links—

From the corner of fractional Section- 22 & 27 Township 50 North Range 33 West of the 5th Principal Meridian, on the former West boundary of Missouri, I run

West Between fractional Sections 22 & 27 Township 50 North Range 33 West of the 5th principal Meridian.

Chains

6.50 A Box Elder 12 inches diameter, which I mark for corner to fractional Sections 22 & 27 on the Left Bank of the Missouri River, from which a Cotton Wood 24 inches diameter bears S. 28 E. 71 links and a Cotton Wood 40 inches diameter bears N. 30 E. 93 links distant.

From which corner I run down stream with the meanders of the Missouri River along fractional Section 27 Township 50 North Range 33 West of the 5th principal Meridian as follows viz:

S. 15 E. 8.00 chains, thence

S. 20 E. 12.56 " to the corner of fractional Section 27 on the former West boundary of Missouri.

From the corner of fractional Sections 22 & 27 on the Left Bank of the Missouri River I run up stream with the meanders of the Left Bank of the Missouri along fractional Section 22 Township 50 North Range 33 West of the 5th Principal Meridian as follows, viz:

North 10.00 chains, thence

N. 7 E. 13.75 " "

N. 37 E. 8.04 " to the post set at 30.00 chains North 30' West of the corner to fractional sections 22 & 27 on the old West boundary of Missouri from which post a Cotton Wood 40 inches diameter bears S. 20 West 58 links distant.

December 15th/46.

JOHN LAMPTON, *D. S.*

From the corner to fractional Sections 15 & 22 on the Left Bank of the Missouri River & Slough, I run

238 up stream with the meanders of the left bank of the Missouri River along fractional Section 15 Township 50 North Range 33 West of the 5th principal Meridian as follows viz:

N. 2 E. 12.50 chains, thence
N. 4½ E. 12.00 " "
N. 7½ E. 20.00 " "
N. 11½ E. 35.00 " "
N. 25 W. 1.57 " to the corner to fractional sections 10 & 15, from which corner post I mark for witness trees (the ones taken last winter being dead) a Sycamore 24 inches diameter bears N. 76 E. 35 links & a Cottonwood 50 inches diameter bears S. 50½ E. 96 Links distant.

Land level river bottom, soil good for cultivation. Timber Cottonwood, Elm, Hackberry, & Box Elder.

(Here follow maps marked Exhibits 8, 9, 10 & 11.)

MAPS

TOO

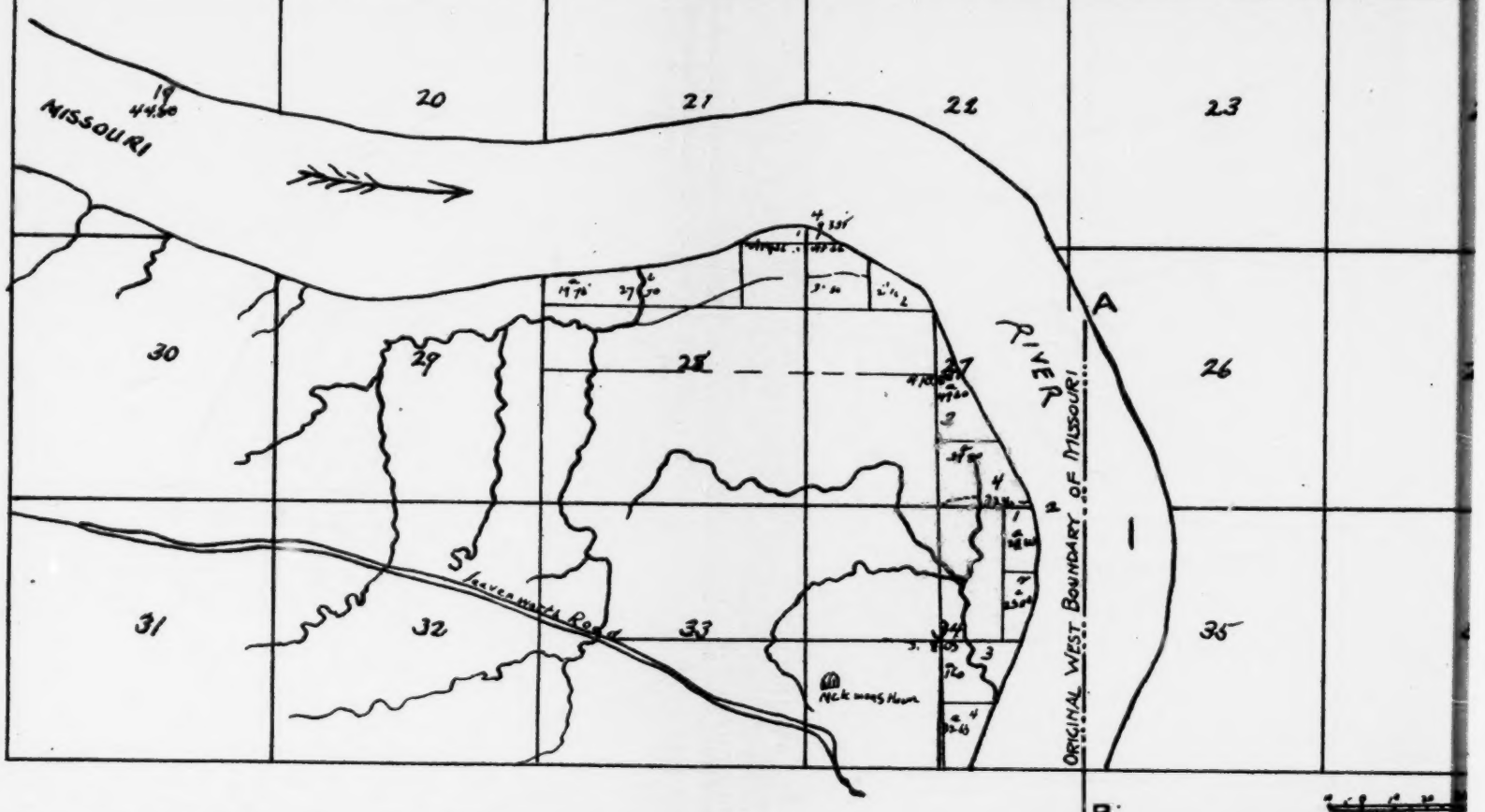
LARGE

FOR

FILMING

Gov- 1855 Maps

T 10 S. Range 25 East of the 6th P. M. K. T.-



Surveys Designated	By whom Surveyed	Date of Contract	Amount of Survey			When Surveyed
			M	chs	Lks	
Township lines Subdivision	Wm G Caldwell	October 27 1855	10	57	46	October 30 to 17 1855
		Meanders	5	54	18	
		To 19	16	31	64	

The above Map of Township No 10 S
6th Principal Meridian Kansas Te
Notes of the survey thereof on file
Surveyor Generals office
Boundaries Oct 30.- 1855.-

I hereby certify that the above
Township 10, South Range 25, E
Surveyor General Office

f. 238-c.

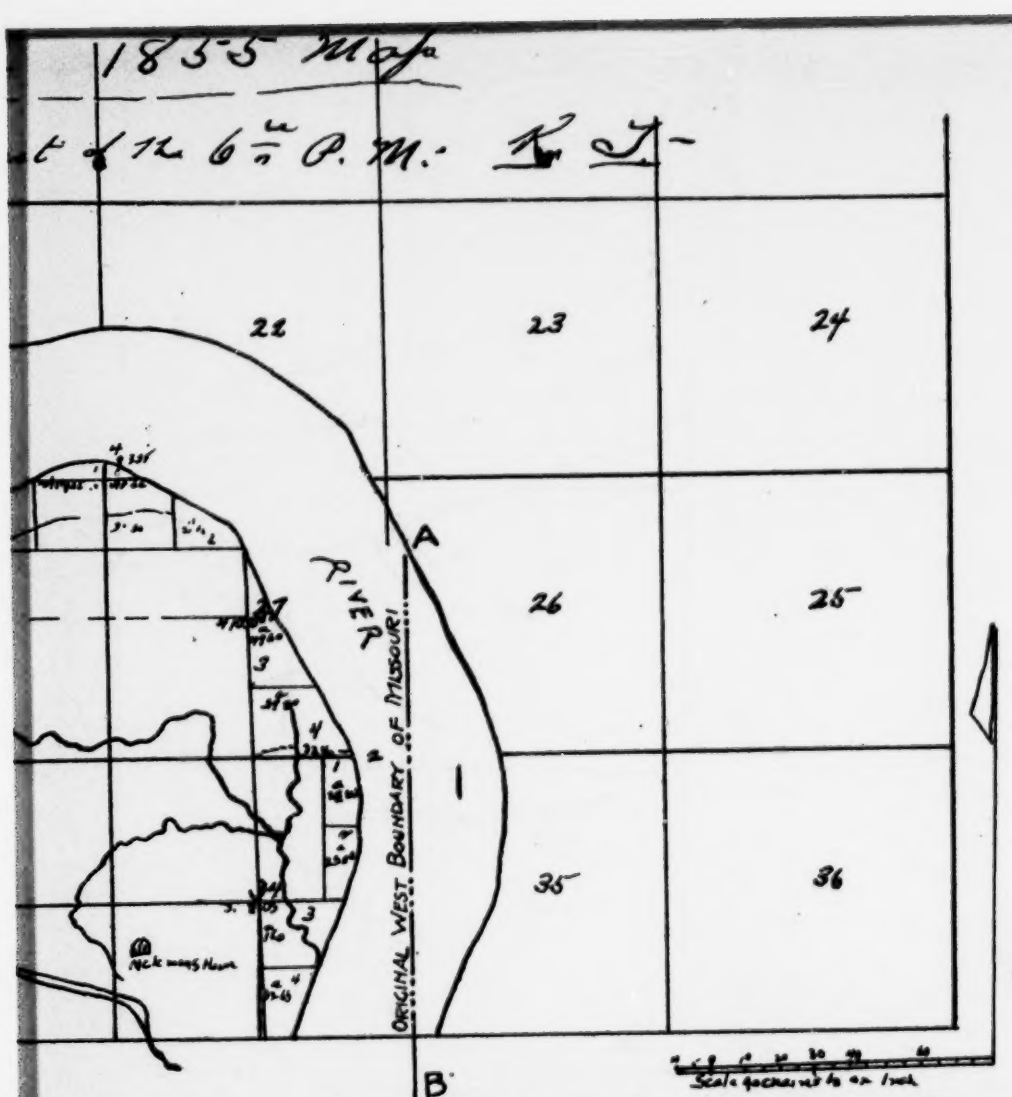


Exhibit 10
Lead Hampton
Record Silhouet
Commissioners

The above Map of Township No 10 South of Range No XXV East of the 6th Principal Meridian Kansas Territory is strictly conformable to the field Notes of the survey thereof on file in the office which have been examined approved

Surveyor Generals office
Boundville Apr 30th - 1856 - } J. Calhoun Surv Genl -

I hereby certify that the above is a correct Copy of the original plat of Township 10, South Range 25, East of the 6th P M. on file in the office

Mark W. Delahay
Surveyed General Officer

Office Surveyor

October 30 1857 1855

Subject to sale Mch 19/21, east of old boundary 4-660.

North of Missouri River, fractional TOWNSHIP No. 50 RANGE No. 33 West

DESCRIPTION OF TRACT.				CONTENTS.		RATE PER ACRE.		PURCHASE MONEY.		NAME OF THE PURCHASER.	DATE OF SALE.	NUMBER OF RECEIPT AND CERTIFICATE OF PURCHASE.
PART OF SECTION.	Section.	Township.	Range.	Acres.	100ths.	Dollars.	Cents.	Dollars.	Cents.			
N° of S W fl 4 & N W of S C°	10	50	33	94	75	1	25	118	44	George W Love	Oct. 4, 1847	6268
Subdivision S W fl 4	"	"	"	45	10	1	25	56	37½	Andrew Martin	June 16, 1848	6940
PE 1841 N W fl qr	15	50	33	53	30	1	25	66	63	William H Russell	July 11th 1849	7566
S W 4	11	"	"	30	15	1	25	37	69	William Chandler	June 13 1848	6934
N E 4	22	"	"	160		1	25	200	—	Elisha Harrington	11 March 1836	6993
N W fl 4	"	"	"	107	62	1	25	129	53	Elisha Harrington	15 March 1836	7041
S W fl 4	"	"	"	106	56	1	25	133	20	Collier Montardieu	31 Oct 1836	7031

Exhibit "A" Clerk Hamilton Atty J. Gibson Ex Commissioner.

(N. 240)

160

HIP No. 50 RANGE No. 33 Watm , DISTRICT OF Missouri.

Money. Cents.	NAME OF THE PURCHASER.		DATE OF SALE.	NUMBER OF RECEIPT AND CERTIFICATE OF PURCHASE.	TO WHOM PATENTED.	DATE OF PATENT.	WHERE RECORDED. Volume.	Page.
44	George W Love		Oct. 4, 1847	6268				
37½	Andrew Martin		June 16, 1848	6940				
43	William H Russell		July 11th 1849	7566				
67	William Chandler		June 13 1848	6934				
—	Elisha Harrington		11 March 1836	6993				
53	Elisha Harrington		15 March 1836	7041				
20	Collier Montardeau		21 Oct 1836	9031				

239 101,951.
B.
M. F. H.

4–207r.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., *Oct.* 12, 1907.

I hereby certify that the annexed copy of so much of the tract book as relates to S. W. 4 Sec. 10, W.^{2} Sec. 15, and W.^{2} Sec. 22, Twp. 50 N. R. 33 W. Missouri, is a true and literal exemplification of the original in this office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

[SEAL.]

H. W. SANFORD,
Recorder of the General Land Office.

(Here follows fac-simile marked p. 240.)

241 EXHIBIT 13. Clad Hamilton, Solon T. Gilmore, Commissioners.

Warranty Deed.

This indenture made and entered into the eight- day of September in the year of our Lord one thousand Eight hundred and thirty six by and between Elisha Harrington and Louisiana his wife of the County of Clay and State of Missouri of the first part and John Lasarge of the County of Jackson and State of Missouri of the second part,

Witnesseth, That the said party of the first part for and in consideration of the sum of sixty dollars to them the said party of the first party by the said party of the second part paid the receipt whereof is hereby acknowledged have granted bargained and sold and by these presents do*th* give grant bargain sell and confirm unto the said party of the second part and to him his heirs and assigns forever a certain lot or parcel of land lying and being in the County of Clay and State of Missouri, viz: It being forty acres to be taken off of the North end of a survey granted to Elisha Harrington No. 7041 for one hundred and three acres and sixty two hundredths of an acre. It being North West fractional quarter of Section twenty two Township No. fifty nine North of the Base line and west of the fifth principal Meridian and Range No. Thirty three the south end of the above survey forty acres is this day conveyed to Andrew Roy.

To have and to hold the above described tract piece or parcel of land and bargained premises and the appurtenances thereunto belonging or in any wise appertaining unto the said party of the second part and to his heirs and assigns forever to the only proper use benefit and behoof of him the said party of the second part and to his heirs and assigns forever and the said party of the first part for themselves their heirs executors and administrators hereby covenant to and with the said party of the second part and his heirs and assigns the said tract piece or parcel of land and bargained premises and every part and parcel thereof unto him the said party of the second part and to his heirs and assigns do*th* and will forever defend against the right title claim interest or estate of all and every person or persons whatever by these presents.

242 In witness Whereof the said party of the first part have here unto set their hands and seals the day and year first above written.

ELISHA HARRINGTON. [SEAL.]

her

LOUISIANA x HARRINGTON. [SEAL.]

mark.

Attest:

BENJAMIN RICKETTS.

STATE OF MISSOURI,
County of Clay, sct:

Be it remembered that on this 9th day of September in the year of our Lord One thousand Eight hundred and thirty six before me Benjamin Ricketts a Justice of the peace within and for the County aforesaid personally came Elisha Harrington and Louisiana his wife both personally known to me to be the persons whose names are subscribed to the foregoing instrument of writing as having executed the same and severally acknowledged the same to be their act and deed for the purposes therein mentioned. She the said Louisiana Harrington being by me first made acquainted with the contents thereof and examined separate and apart from her husband whether she executed the said deed and relinquishes her dower in the lands and tenements therein mentioned voluntarily freely and without compulsion or undue influence of her said husband acknowledged and declared that she executed the said deed and relinquishes her dower in the said lands and tenements therein mentioned voluntarily freely and without compulsion or undue influence of her said husband Taken & Certified the day and year above written.

BENJAMIN RICKETTS, *J. P.*

MEMORANDUM.—The foregoing deed was filed for Record and by me duly Recorded on the 10th day of November A. D. 1836.

SAML. TILLERY,
Clerk & Recorder.

In the Recorder's Office.

STATE OF MISSOURI.
County of Clay, ss:

I, John Will Hall, Recorder of Deeds within and for the County of Clay aforesaid, do hereby certify that the above and foregoing is a full, true and complete copy of the Warranty deed between Elisha Harrington and wife and John Lasarge as the same appears of record in my office in Book D, Page 352 and following.

In Testimony Whereof, I hereunto set my hand and affix the seal of said office, at Liberty, Missouri, this 4th day of October A. D. 1907.

JOHN WILL HALL, *Recorder.*

243 E. 4–207.

J. H. B.

M. L. 191952.
M. L. 192124.

DEPARTMENT OF THE INTERIOR, C. L. D. B.
GENERAL LAND OFFICE,
WASHINGTON, D. C., *October* 18, 1907.

I hereby certify that the annexed copy of the field notes of the survey of fractional sections 27 and 34, Township 10 South, Range

25 East, 6th P. M., Kansas, is a true and literal exemplification of the official field notes of said survey on file in this office.

In testimony whereof I have hereunto subscribed my name and caused the Seal of this Office to be affixed, at the City of Washington, on the day and year above written.

[SEAL.] R. A. BALLINGER,
Commissioner of the General Land Office.

244 EXHIBIT 14. Clad Hamilton, Solon T. Gilmore, Commissioners.

Second Standard Parallel, Range 25 East.

* * * * * * *

East on True Line Along South Boundary of Section 33.

* * * * * * *

80.00 Set limestone rock 21 in. long 10 in. wide and 3 in. thick on Western slope for a corner to sections 33 and 34 from which
Ash 8 in. dia. bears N. 71° W. 30 lks. dist.
Pin oak 6 in. dia. bears N. 60½° E. 41 lks. dist.
Pin oak 22 in. dia. bears S. 52° W. 50 lks. dist.
Walnut 10 in. dia. bears S. 32° E. 90 lks. dist.
Land rolling, Soil 1st. rate.
Timber, lynn, black oak, hickory and cherry.
Undergrowth hazel and sumac.

. . . . . .

East on a True Line Along the South Boundary of Section 34.

4.00 Road N. and S.
8.80 Red oak 3 in. dia.
9.00 Ravine 20 lks. wide course S. W.
9.34 Enter improvement.
19.85 Road N. and S.
30.85 Left improvement.
31.00 Enter Missouri Bottom.
40.00 Set walnut post as per instructions for a quarter section corner from which
Sycamore 4 in. dia. bears N. 86° W. 6 lks. dist.
Sycamore 5 in. dia. bears S. 21½° E. 20 lks. dist.
43.50 Entered lower bottom.
45.81 Cottonwood 20 ins. dia.
50.00 Right bank of Missouri River at which point set limestone rock 21 ins. long 19 in. wide and 4 in. thick for a marginal corner on South Boundary of Sec. 34 from which
Cottonwood 10 in. dia. bears N. 55¼° W. 82 lks. dist.
Cottonwood 26 in. dia. bears S. 40° E. 29 lks. dist.
From Marginal Corner to Left Bank of Missouri River.

245 Second Standard Parallel, Range 25 East.

31 chains as ascertained by calculation. Course of river South 7½° west. The mouth of the Kansas River from point of intersection with the Missouri bears S. 7½° W. 53 chains dist.
Course of Kansas River N. 20° E.
September 3d, 1855.

* * * * * * *

Field Notes

of the Subdivision lines and meanders of Missouri river, in Township 10 S., R. 25 East of the 6th Principal Meridian, in the Territory of Kansas, by William S. Caldwell, Deputy Surveyor, under his contract No. 1, bearing date the 27th day of October, 1855.

Commenced October 30, 1855.
Completed November the 7th, 1855.

* * * * * * *

Township 10 S., R. 25 E., 6th P. Md.

North between sections 33 and 34.

Variation 10° 47′ East.

6.48 A white oak 20 in. diam.
14.50 Road runs S. E.
23.50 Small branch runs N. W.
28.00 A point 8 chains west of Mr. Clemons' house.
40.00 Set post for quarter section corner from which
A white oak 25 in. dia. *near* N. 13° E. 26 lks. dist.
An oak 15 in. diam. bears S. 26° W. 56 lks. dist.
46.90 A walnut 14 in. diam.
48.50 Ravine rune N. E.
65.00 A lynn at foot of bluff 32 in. diam.
Here enter the Missouri River bottom bears S. E., no signs of overflow.

246 Township 10 S., R. 25 E., 6th P. Md.

76.18 Elm 25 in. diam.
80.00 Set post for corner to sections 27, 28, 33, 34 from which
A sycamore 40 in. diam. bears S. 64° W. 16 lks. dist.
An ash 9 in. diam. bears N. 48° W. 17 lks. dist.
An oak 14 in. diam. bears S. 55½° E. 9 lks. dist.
Red Haw 7 in. diam. bears S. 17° E. 20 lks. dist.
the South half broken 2nd. rate. North half level bottom Soil 1st rate.
Timber oak, hickory, lynn, elm, sycamore.
Undergrowth hazel and pawpaw.

. . . . . .

* * * * * * *

North between sections 27 & 28.

Variation 10° 47′ East.

2.00 Slough 100 lks. wide runs East and West.
26.60 Bottom 8 ft. lower runs East.
36.00 Sycamore 32 in. diam.
40.00 Set post for quarter section corner, from which
A sycamore 37 in. diam. bears N. 77½° E. 68 lks. dist.
A hackbu-ry 8 in. diam. bears S. 71° W. 31 lks. dist.
74.00 Bottom falls 4 feet runs East.
76.00 Branch 3 feet lower runs East.
80.00 Set post corner to sections 21, 22, 27 and 28 from which
A sycamore 26 in. diam. bears S. 46½° W.
62 links distant.
A sycamore 17 in. diam. bears N. 45° W.
74 links dist.
A box elder 11 in. diam. bears N. 41° E.
77 links dist.
A sycamore 18 in. diam. bears S. 86° E.
48 links dist.
Land level bottom.
Soil 1st rate. No signs of overflow.
Timber, sycamore, cottonwood, box elder, hickory and hackbu-ry.
Undergrowth same.

. . . . . .

* * * * * * *

247 Township 10 S., R. 25 E., 6th P. Md.

Knowing the line between sections 22 and *and* 27 will strike the river in less than 80 chains therefore I run it East on a true line.

Variation 11° 25′ East.

7.00 A point 1.00 links South of a vacant cabin.
14.69 Marked cottonwood on right bank of Missouri River for corner to fractional sections 22 and 27 from which
A cottonwood 8 in. diam. bears S. 42° W.
6 links dist.
A cottonwood 9 in. diam. bears N. 89° W.
34 links dist.
Land level bottom, dry. Soil 1st rate.
Timber cottonwood, sycamore and box elder.
Undergrowth same.

. . . . . .

Knowing the Line between sections 27 and 34 will strike the Missouri River in less than 80 chains therefore I run it on a true line.

Variation 11° 25′ East.

4.00 Bottom falls off 4 ft. runs S. E.
10.00 Bottom 8 ft. lower, signs of overflow.
32.60 Slough 60 lks. wide runs S. W.
32.70 Box elder 7 in. diam.
46.00 Set post for quarter section corner from which
Cottonwood 18 in. diam. bears S. 55½ E. 47 links distant.
A cottonwood 11 in. diam. bears N. 42° W. 17 links distant.
54.00 Slough 50 links wide runs South, some water.
72.96 Set post on right bank of Missouri, corner to fractional sections 27 and 34, from which
A cottonwood 10 in. diam. bears N. 50 W. 51 links distant.
A cottonwood 9 in. diam. bears S. 63 W. 15 links distant.
Land level bottom, most of it subject to overflow.
3rd rate.
Timber cottonwood, sycamore, box elder. Undergrowth same.
November 5, 1855.

.....

248 Township 10 S., R. 25 E., 6th P. Md.

Meanders of Right Bank of Missouri River through the Township.

Begin at corner to fractional sec. 34 on the South boundary of the Township and on right and west bank of the river through sec. 34 as follows

Variation 11° 00′ East.

Bearings.	Distance.	
N. 37½ E.....	7.84	chains.
N. 25¾ E.....	26.00	
N. 19¾ E.....	8.05	
N. 17¾ E.....	15.96	
N. 10½ E.....	12.70	
N. 4° W.....	4.02	
N. 7° W.....	4.56	
N. 15¼ W.....	4.18	
N. 7 W	3.60	To corner of fractional Sec-. 34 and 27.
		Thence in Sec. 27.
N. 10 W.....	7.49	
N. 25 W.....	9.05	
N. 33½ W.....	9.44	
N. 33¾ W.....	5.95	
N. 35½ W.....	11.80	
N. 21¾ W.....	6.51	
N. 21 W.....	5.60	

N. 19 W.....	2.97	Upper end of barr.
N. 25¾ W.....	2.25	
N. 32 W.....	1.38	
N. 33 W.....	5.53	
N. 43¼ W.....	5.19	
N. 45½ W.....	9.80	
N. 55½ W.....	8.98	
N. 64¼ W.....	8.00	
N. 85 W.....	1.29	To cottonwood corner to fractional sec-. 22 and 27.

249 Office of V. H. Elliston, Surveyor of Platte County.

Address: Weston, Mo.

PLATTE CITY, Mo., *Oct.* 26, 1907.

I, V. H. Elliston, County Surveyor of Platte County, State of Mo. do hereby certify that the annexed map and plat, hereto attached is a true and correct map of Platte County, Mo., as shown by the records, maps, and drawings now on file in my office in Platte City in said Platte County.

V. H. ELLISTON,
County Surveyor.

(Hereto attached is map marked Exhibit 15.)

MAPS

TOO

LARGE

FOR

FILMING

250 STATE OF MISSOURI,
County of Platte, ss:

May Term, 1839.

In the County Court of said County, on the 6th day of May, 1839, the following, among other proceedings, were had, viz.:

Mathew M. Hughes, the surveyor duly appointed and commissioned agreeably to an act entitled "An Act to organize the Counties of Platte and Buchanan and to define the boundaries of the same, approved December 31st, 1838," presents and submits his report of the survey which he has made agreeably to the above recited act, whereupon the Court appoints James Brassfield and Solomon L. Leonard, a committee to examine the same, who are required to make their report thereon to this Court on the 11th inst.

May 11th, 1839.

The report of James Brassfield and Solomon L. Leonard, in reference to their examination of the report of M. M. Hughes, having been read in open Court, the said M. M. Hughes submitted the following report, viz.:

To the Honorable County Court of Platte County and State of Missouri:

I received from the Honorable Lilburn W. Bogs, Governor of the State aforesaid, a Commission authorizing and empowering me to ascertain, survey and establish the boundaries of Platte and Buchanan Counties agreeably to and act of the Legislature of said State of Missouri passed in the year 1838, to establish and organize said Counties of Platte and Buchanan, which said Act made it my duty to commence at the Southwest corner of Clay County and running North with the Western boundaries of Clay and Clinton Counties to a corner; thence a due West course to the center of the main channel of the Missouri River; thence down the center of the same to the beginning; so as to include just Four hundred square miles. In obedience to said Commission and in conformity to said Act I commenced on the corner of Clay County, as aforesaid, after being duly sworn, with Messrs. John Hancock and Simon A. Stone, sworn chain carriers, and measured up the meanders of said river fifty-five miles and six chains where I marked a corner on the bank of said river which is the Western and Southern boundary of your County viz.: the center of the main channel, I then run a due East
251 Course marking each fore and aft tree with a blaze and two chops on each side, and the tree on each side in the same way forming the line to a stake in the line, of Clinton County which I found to be, by plotting, *to be* twenty seven miles and forty chains, which is the Northern boundary of your County. I then ascertained in the same way that I was thirty miles and forty-four chains North of the beginning, which will make a part of the Western boundary of Clinton and all of the Western boundary of Clay Counties, your Eastern boundary, containing Four hundred square miles, all which is respectfully submitted and reported to your Honorable Body by,

MATHEW M. HUGHES, *Surveyor.*

N. B.—I was engaged in performing the above seventeen day

which is also submitted by M. M. Hughes, which report last aforesaid, being read in open Court the same is received by the Court and it is ordered that the same be recorded and thereupon the Court ascertained the sum of One hundred and two dollars to be due the said Hughes for said survey and map accompanying said report and the Clerk is ordered to issue a warrant therefor which is done accordingly.

Exhibit A-4. Clad Hamilton, Solon T. Gilmore, Commissioners.

STATE OF MISSOURI,
County of Platte, ss:

I, A. M. Hord, Clerk of the County Court, in and for said County, hereby certify the above and foregoing to be a true copy of the proceedings of our said County Court, on the days and year above written, as the same appears of record in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court, at office in Platte City this the 25th day of November, 1907.

[SEAL.]

A. M. HORD,
Clerk of the County Court.

[Endorsed:] No. —. Certified copy of order of County Court, Made at May Term, 1839. In the matter of App. Mathew M. Hughes to survey boundary lines of Platte and Buchanan Cos. and report of survey. Ex. A-4.

252

UNITED STATES OF AMERICA,
WAR DEPARTMENT,
WASHINGTON, *November* 22, 1907.

I hereby certify that the attached blue print is a true copy of an original tracing entitled "Map of the Missouri River vicinity of Kansas City, Mo., and Kansas City, Kan., showing proposed Harbor Lines along both banks" approved by the Secretary of War August 22, 1904, on file in the office of the Chief of Engineers, U. S. Army.

A. MACKENZIE,
Brig. Gen., Chief of Engineers, U. S. Army.

Be it known that A. Mackenzie, who signed the foregoing certificate, is the Chief of Engineers, U. S. Army, and that to his attestation as such full faith and credit are and ought to be given.

In witness whereof I have hereunto set my hand, and caused the seal of the War Department to be affixed, on this 22nd day of November, one thousand nine hundred and seven.

[SEAL.]

ROBERT SHAW OLIVER,
Acting Secretary of War.

(Here follow maps marked pp. 252*a* and 252*b*.)

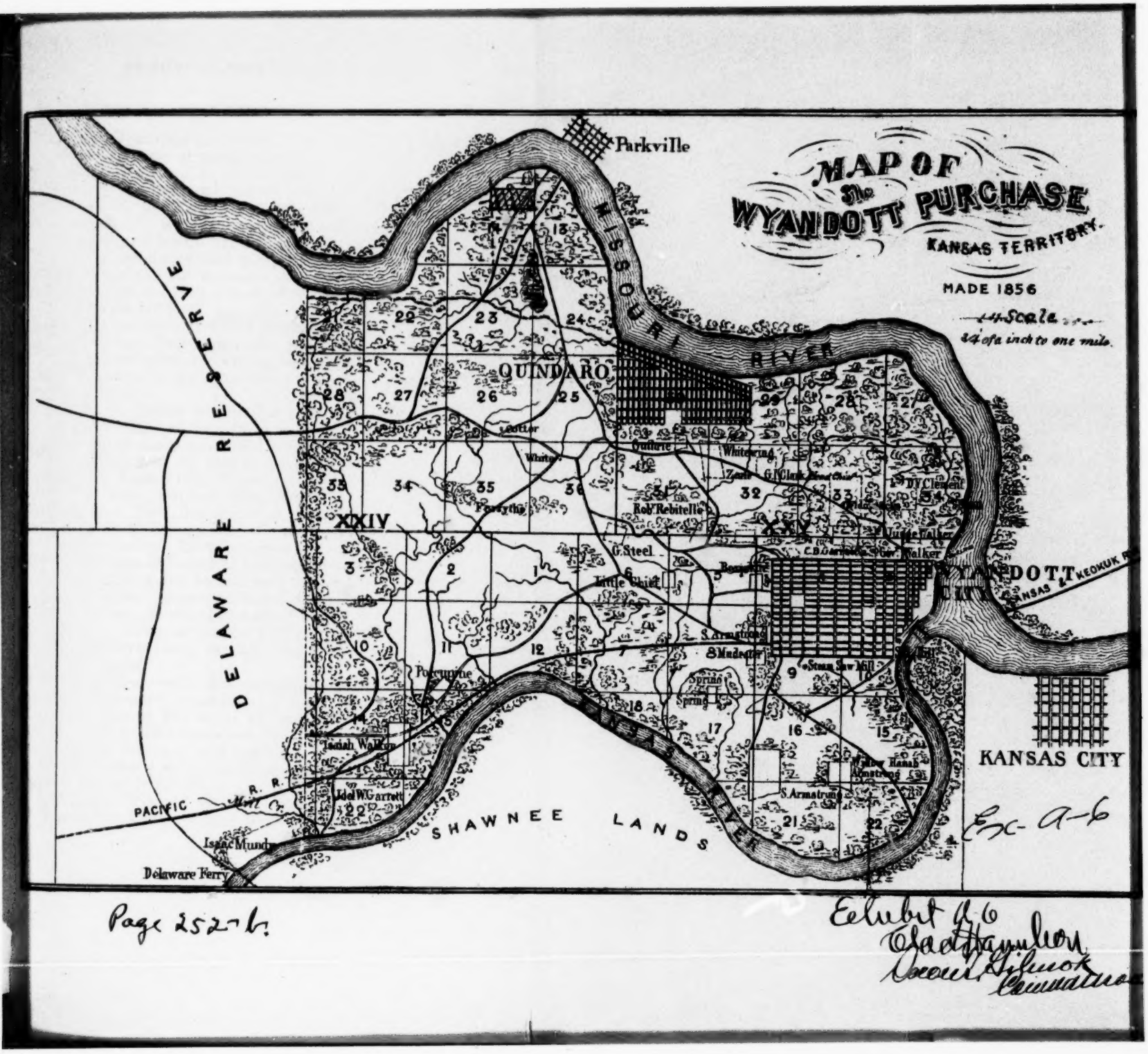
MAPS

TOO

LARGE

FOR

FILMING



Page 252-b.

Exhibit A-6
Chas. Hamilton
Deceased Citizen
Cherokee

253 UNITED STATES OF AMERICA, *ss:*

We, Clad Hamilton and Solon T. Gilmore, duly appointed commissioners by order of the United States Supreme Court, on April 29, 1907, in said cause, do hereby certify that at the times and places in the foregoing testimony recited, appeared before us the witnesses herein named, to-wit, F. W. Tuttle, Frank P. Sebree, George S. Schreiner, L. A. Goodman; and the said witnesses who were of sound mind and lawful age having been by us first carefully examined and cautioned and sworn to testify the truth, the whole truth and nothing but the truth in the within entitled cause, gave their testimony which by consent of counsel for the respective parties as hereinbefore set forth, was taken down by a disinterested stenographer obtained by us for that purpose, in the presence of the witnesses and from their statements, and the said stenographic notes we afterwards reduced to writing on a typewriter and the signature of the witnesses to the same being waived by counsel for the respective parties.

And we do further certify that neither of us is of counsel nor attorney for either of the parties named nor in any way interested in the event of the cause named herein.

We do further certify that we convened for the purpose of taking testimony at Kansas City, Missouri, upon the following days, to-wit, September 14th, October 18th, November 1st, November 22nd, December 6th, 1907, January 17th, February 15th, April 10th and April 11th, 1908, being a total of nine days; and that upon said 10th day of April, 1908, pursuant to notice duly served upon the
254 attorneys of record of each of the parties hereto and in the presence of and by and with the consent of Hunter M. Meriwether, Esquire, attorney of record for the State of Missouri, and John S. Dawson, Esquire, attorney of record for the State of Kansas, the taking of testimony herein was by us duly closed; and that adjournments having been regularly taken from time to time as in the testimony recited.

We do further certify that said commissioner, Clad Hamilton, expended in necessary expenses in attending the taking of said testimony the sum of $44.16, of which the State of Kansas has paid $36.01, and the said commissioner Solon T. Gilmore, expended in attending the taking of said testimony the sum of $9.50.

We do further certify that the stenographer's charge in the above entitled matter is $93.50.

In Witness Whereof we have hereunto set our hands at the city of Kansas City in the State of Missouri this 11th day of April, 1908.

CLAD HAMILTON,
SOLON T. GILMORE,
Commissioners.

255 (Endorsed on wrapper.)

In the Supreme Court of the United States.

STATE OF MISSOURI, Complainant,
vs.
STATE OF KANSAS, Defendant.

Testimony on the part of *of* complainant and defendant taken before the undersigned commissioners to take testimony in the above entitled cause.

Sealed up by us and transmitted this 11th day of April, 1908.
CLAD HAMILTON,
SOLON T. GILMORE,
Commissioners.

Office of the Clerk,
Received
Apr. 20, 1908,
Supreme Court U. S.

Wells, Fargo & Company,
Express,
Money Department,
Apr. 15, 1908,
Kansas City, Mo.

Hon. JAMES H. MCKENNEY,

Clerk of the United States Supreme Court,

Washington, D. C.

256 And afterwards, to wit, on the 26th day of October, A. D. 1908, the following entry appears of record.

257 Supreme Court of the United States, October Term, 1908.

No. 6, Original.

STATE OF MISSOURI, Complainant,
vs.
STATE OF KANSAS.

On consideration of the motion to fix a day for the hearing of this cause,

It is now here ordered by the Court that the cause be, and the same is hereby, assigned for argument on Tuesday, February 23d, 1909.

October 26, 1908.

Endorsed: Supreme Court of the United States, October Term, 1908, No. 6, Original. State of Missouri, Complainant, *vs.* State of Kansas. Order fixing day for hearing. Filed Oct. 26, 1908.

Office Supreme Court, U. S.
FILED
MAR 8 1905
JAMES H. McKENNEY,
Clerk

In the Supreme Court of the United States.

THE STATE OF MISSOURI, *Complainant*,

vs.

THE STATE OF KANSAS, *Defendant*.

No. 6 Original.

BRIEF AND ARGUMENT OF THE DEFENDANT.

P. S. JACKSON, *Attorney-general*,
JOHN S. DAWSON,
Assistant Attorney-general,
Attorneys for Defendant.

C. C. Coleman,
Of Counsel.

In the Supreme Court
of the United States.

THE STATE OF MISSOURI, *Complainant*,

vs.

THE STATE OF KANSAS, *Defendant*.

No. 6 Original.

BRIEF AND ARGUMENT OF THE DEFENDANT.

STATEMENT.

THE complainant contends that in 1837, and for some time prior thereto, the western line of Missouri ran due north from a point on the left bank of the Missouri river opposite the mouth of the Kaw river, and that this straight line for a distance of two to two and a half miles north of this point practically conformed to the left bank of the river, and that therefore the change in the boundary of the state made in 1837, extending the territory of the state from the old line west to the Missouri river, had no effect on this part of the state's boundary, and as the island in controversy was formed on the bed of the river within two and one-half miles of the mouth of the Kansas and now extends across the old line of the state of Missouri, that it is subject to the jurisdiction of that state.

The defendant claims that there is no evidence to prove the facts contended for by the complainant, and further, if the facts contended for by the complainant be conceded still the act of Congress and of the legislature of the state of Missouri and the amendment of the constitution of the state of Missouri at or about the year 1837 had the effect of fixing permanently the boundary of the state of Missouri on the meridian channel of the Missouri river from the northern boundary of

the state to the confluence of the Kansas river with the Missouri, and therefore such meridian line was the state line at all points in controversy in this suit, and has been so considered and held by each state since 1837.

The defendant further contends that the island in controversy arose on the bed of the river near the center of the old channel and has been gradually extended toward the east by accretions thereto, the channel of the river thus moving to the east until the main channel of the river, and therefore the state line, is entirely to the east of the island in controversy, leaving it within the jurisdiction of Kansas.

DEFENDANT'S EVIDENCE.

The defendant proves that from 1820, the date of the admission of Missouri into the Union, until 1837, the western boundary of Missouri in controversy extended from a point on the left bank of the Missouri river opposite the mouth of the Kansas river northward on a definite straight line to the intersection with the parallel of latitude which passes through the rapids of the River Des Moines.

From 1820, and for a number of years afterward, there was a tract of territory bounded on the north by the same parallel of latitude which lay between the Missouri river on the west and the west line of Missouri as it then existed on the east. This territory was known as an Indian country, and was acquired by the government in 1825.

In 1831 the general legislative assembly of Missouri memorialized the Congress of the United States, soliciting that said tract of land be attached to the state of Missouri and the west line of that state extended to the middle of the Missouri river at all points north of the mouth of the Kansas river. The reasons given for this were that the lands in the vicinity of the Missouri river were inhabited by savages, and that the Missouri river was more suitable and desirable for a boundary-line between such savages and the people of Missouri than an artificial and arbitrary boundary-line; and the further fact that "the part of this (state) line which lies north of the Missouri river has never been surveyed and established, and consequently its precise condition and extent are unknown"; and the still further fact that the Missouri is the only great highway of this region, and that changes in territory would allow

it to be opened as a source of transportation to the new country. (Rec. 55, 56.)

Some time in 1834 a committee of Congress recommended that the memorial of the state of Missouri be granted, and urged as a reason therefor that the Missouri river was a more suitable boundary-line between the state of Missouri and the savage Indian country to the westward than any artificial boundary-line. (Rec. 60.)

Congress adopted this report and passed an act granting to the state of Missouri the said tract of land for local jurisdictional purposes, and extended the boundaries and territory of the state of Missouri so as to include said tract of land and abandoned for every purpose the original arbitrary and artificial surveyor's boundary-line which had prior to that time extended between the state of Missouri, from the confluence of the Kansas and Missouri rivers, to the north, and fixed the line as follows: "The Missouri river and the meridian line of the main channel thereof from the confluence of the Kaw (Kansas) river and the Missouri upward and following the thread of said river to the north boundary of the state of Missouri." (Rec. 67.)

In 1837, for the purpose of accepting the terms of said act of Congress, the constitution of the state of Missouri was amended, and the boundaries of the state of Missouri north of the Missouri river and west of the old state line were extended so as to run north from the confluence of the Kansas and Missouri rivers and to include the territories ceded by the Indian tribes to the United States government. (Rec. 68.)

On June 7, 1836, the Congress of the United States passed an act agreeing to the altered boundaries of the state of Missouri involved in this controversy; and in 1837 the President of the United States issued his proclamation extending the boundaries of the state of Missouri westward to the Missouri river. (Rec. 68.)

The legislative assembly of the state of Missouri, on December 16, 1836, passed an act ratifying and consenting to the thus altered boundaries of the state of Missouri. (Rec. 68.)

The constitution of Missouri (rec. 53), section 1, article 1, recites that the west line of the state was a meridian line passing through the middle of the mouth of the Kansas river where the same empties into the Missouri river. It is clear, then,

from the above that the intention of the acts and transactions taken by the federal government and the state of Missouri was to extend the line westward so that the meridian line of the Missouri river would become the line between Missouri and the Indian Territory on the west from the mouth of the Kansas north to the north line of the state. Every act taken since that time by the state of Missouri in administering her local affairs and exercising the jurisdiction of a sovereign state has carried out this intention.

The counties of the state of Missouri bordering upon the island in controversy, and the only counties in the state of Missouri in or near the disputed boundary-line, are the counties of Platt, Clay and Jackson, and in fixing the boundaries of each of said counties where they touch upon the west boundary of the state the legislature used language showing that the jurisdiction of the county, and therefore of the state, extended to the middle of the Missouri river. (Rec. 72.)

The statutory boundary of Clay county wherever it touches the river goes to the middle of the river and a part of the west line of the county is the middle of the main channel of the Missouri river to a point where the old state line would intersect the river. This conclusively shows that the line was at some time, as to everything contained in Clay county, changed from the old state line to the middle of the Missouri river. (Rec. 73.) The west line of Platt county is also in the middle of the Missouri river. In Jackson county the county commences practically at the mouth of the Kansas river. The north line of the county continues as the meridian line of the river current.

It will be noticed that in none of the three counties mentioned is any land claimed south or west of the middle of the Missouri river, and that from the northwest corner of Jackson county, the center of the river at the mouth of the Kansas on the north for three counties of the state, the state line is described as the meridian line of the Missouri river.

The courts of the state, as well as the federal courts, have recognized this as the boundary-line of the state for many years.

In the case of Millard F. Cooley v. James F. Golden (rec. 74), 52 Mo. App. 229, court of appeals of the state of Missouri, one of the appellate courts of that state, it was held that the act of

Congress, the constitution of Missouri and the acts of the legislature, excepting the grant of Congress, "extended the northern boundary-line of the state to the middle of the channel of the Missouri river and from thence down the river to the middle of the Kansas river." (Rec. 76.)

In the case of The St. Joseph, G. I. R. Co. v. Devereux, sheriff, 41 Fed. 14 (rec. 79), it is held that the act of Congress ceding the Platt Purchase to Missouri established the boundary-line of the state at the meridian line of the channel of the river, from the mouth of the Kansas river north to the north boundary of the state. The constitution and statutes of Kansas also recognize the west line of Missouri so established as the east line of Kansas.

As further evidence of the acceptance by the state of Missouri of this state of affairs, we cite the correspondence between the executive departments of Kansas and Missouri of as late a date as 1906. (Rec. 88-91.) This correspondence shows that acting under direct instructions of the governors of each state, the sheriffs of Clay county, Missouri, and of Wyandotte county, Kansas, were directed to meet at or near the state line and prevent a prize-fight, it being conceded by the governor of Missouri that the middle of the channel of the river was the line and that, therefore, all or nearly all of the island in controversy was under the jurisdiction of the governor of Kansas. This is proved also by lawyers and other old residents in that vicinity by the state of Kansas, and not disputed by the complainant. (Rec. 92, 93.)

Geo. A. Schreiner (rec. 94), who was a steamboat pilot from 1857 until 1861, testifies as to how Goose Island was built, and that Goose Island is just about the middle of the river. That the island arose from the bed of the river and has been gradually added to by accretions, and that the main channel of the river has, therefore, gradually shifted toward the north and east until all of the island is west of the channel of the river.

ARGUMENT OF THE DEFENDANT.

POINTS OF ARGUMENT.

I.

The defendant contends that the act of Congress of 1836 extending the jurisdiction of the state of Missouri over the lands between said state and the Missouri river, and extending the western boundary of said state to the Missouri river, was an authoritative establishment of the boundary-line of that state to the meridian line of the channel of the Missouri river from the mouth of the Kansas river north to the northern boundary of the state.

II.

That the state of Missouri, having accepted such determination of its boundary and all of the officials and people of the state having acted in accordance therewith since 1836 until the present time, and her sister states of Kansas and Nebraska having also acted on such understanding, such boundary-line of the state of Missouri became fixed on the thread of the Missouri river channel at all points above the mouth of the Kansas river, and such boundary cannot now be questioned by the state of Missouri.

III.

Where a river is declared to be the boundary between states, if such river suddenly change its course or desert the original channel as the result of a great flood or what is commonly known as an avulsion, the boundary between such states remains in the middle of the deserted river bed, but if the river change imperceptibly, from natural causes, the river as it runs continues to be the boundary between the two states.

IV.

Where a river is the boundary-line between two states, the jurisdiction of said states is concurrent over the channel of the river to the meridian line of said channel, but where an island arises and exists on the bed of said river and the main channel of the river flows to one side only of the island, such island is within the jurisdiction of the state nearest to which it is located.

I.

The defendant contends that the act of Congress of 1836 extending the jurisdiction of the state of Missouri over the lands between said state and the Missouri river, and extending the western boundary of said state to the Missouri river was an authoritative establishment of the boundary-line of that state to the meridian line of the channel of the Missouri river from the mouth of the Kansas river north to the northern boundary of the state.

We think the maps and charts introduced by the complainant, as well as the other evidence tendered for that side of the case, throw little light on the controverted facts. We submit that a consideration of the purposes of the extension of boundary as gleaned from the historical documents of that time is a better guide to what was really done, the true status of the state boundary at that time and the changes that were made than anything else in the record.

In the memorial of the general assembly of Missouri, approved January 15, 1831, and delivered to Congress on or about that time, the following language is used:

RECORD 55. "The part of this line (the boundary) which lies north of the Missouri river has never been surveyed and established, and consequently its precise position and extent are unknown. It is believed, however, that it extends about 100 miles north from the Missouri river and almost parallel with the course of the stream so as to leave between the line and the river a narrow strip of land varying in breadth from fifteen to thirty miles." . . . . . .

RECORD 56. "These considerations seem to us sufficiently obvious to impress upon the public mind the necessity of interposing, whenever it is possible, some visible boundary and natural barrier between the Indians and the whites, the Missouri river bending as it does beyond our northern line, will afford the barrier against all the Indians on the southwest side of that river by extending the north boundary of this state in a straight line westward until it strikes the Missouri, so as to include within this state the several districts of country between that line and the river, which we suppose is not more than sufficient to make two, or at the most three, respectable counties.

"Aside from the considerations connected with the peace and safety of the frontier there are other and all-sufficient reasons for this addition to the state. Our western line as it exists now, suppose we run from the mouth of the Kansas

north, is about 100 miles long, and the country is settled and is rapidly settling to its utmost verge. The Missouri is the only great highway of this region and the only means of conveying its products to market. Without this addition those who may settle near the northwest corner of the state will have an hundred miles overland carriage to the nearest point of their only good road to market, and will be compelled, in order to reach the nearest point of navigation, to pass for twenty or thirty miles through a savage and partly hostile country. A view of the map will prove this position."

It seems quite apparent from these quotations from the memorial of Missouri that the desire was to extend the line from the mouth of the Kansas river in the middle of the channel of the Missouri river north to the north line of the state. This subject was considered in the senate of the United States in a report made by the committee on Indian affairs of that body, filed April 8, 1834. In that report we find the following statements:

RECORD 59. "The lands on the west boundary from the northwest corner of the state to the mouth of the river, Kansas, have not been, by any treaty yet ratified, assigned to any Indians." . . .

RECORD 60. "By extending the northern boundary of the state of Missouri from the point where it now intersects the river Des Moines due west until it strikes the river Missouri and pursuing that river down with its various meanders to where it intersects the west boundary-line of the state at the mouth of the Kansas river, a natural boundary formed by the river about half a mile wide will be substituted in place of an ideal or artificial boundary or about one-third of the whole length of the west boundary-line of said state. . . . By thus extending the northern boundary-line from the point of its present termination to the river Missouri, and then making that river the west boundary to the mouth of the Kansas river, will establish a convenient and place a natural boundary-line between the whites and the Indians, and put it in the power of the citizens of Missouri, as well as the Indians, to have and enjoy all the advantages to be derived from the navigation of that part of the river which forms the said boundary."

February 26, 1836, the same subject was considered by the house of representatives, and the committee on Indian affairs filed a report to accompany house bill No. 381, which afterwards became the act extending the boundary of the state line.

Speaking of the history of the bill and the reasons for it, the committee says:

"On the 5th of June, 1834, the bill was amended in committee of the whole (and reported as amended to the house) by directing the line to be run from the mouth of the Kansas river up the Missouri until it shall reach the parallel of latitude which passes through the rapids of the Des Moines into the river Mississippi, and from thence to the Mississippi, etc., etc., and by adding the following section. Subsequent to these proceedings, on the 1st day of October, 1834, the said United Nation (Chippewas, Otoes and Pottawatomies) agreed to the amendment to the treaty proposed by the senate, and on the 21st of February, 1835, the treaty as thus modified was definitely ratified. It is obvious from this history of the treaty that its purpose and object was well understood by all parties and that no further assent is necessary on the part of said United Nation to the proposed extension of the west boundary of Missouri."

The committee finally recommended that the Indian title to all of such land should be fully extinguished, and for the purpose of doing so recommended the bill mentioned above, which afterwards became a law, is as follows:

RECORD 67. "A bill to extend the west boundary of the state of Missouri to the Missouri river. Be it enacted by the senate and house of representatives of the United States of America in Congress assembled. That when the Indian title to all of the lands lying between the state of Missouri and the Missouri river shall be extinguished the jurisdiction over said lands shall be hereby conceded to the state of Missouri, and the western boundary of said state shall then be extended to the Missouri river, reserving to the United States the original right of soil in said lands and of disposing of the same; provided, that this act shall not take effect until the President shall, by proclamation, declare that the Indian title to the said lands has been extinguished."

The act of the legislature of the state of Missouri assenting to the said act of Congress and the amendment of the constitution of Missouri to accord therewith has each been heretofore mentioned, and these parts of the record are repeated in some length for the purposes, stated above, of showing clearly the object sought to be obtained by the act of Congress, and the people of the state of Missouri, acting through their legislature.

Now, it is scarcely conceivable that the people of Missouri took all of this procedure and care to have the boundary-line

of their state settled and still left it as uncertain as the claim of the complainant in this case would have it appear. If the line was not extended to the middle of the Missouri river at all points from the mouth of the Kansas north then the line was left uncertain and indeterminable at every point where the Missouri river approached the old meridian line, which prior to that time was thought to mark the western boundary of the state.

According to the present contention of the state of Missouri, there was at least two miles and a half where the river became the boundary for a few rods or feet and the old meridian line the boundary for a short distance. We repeat that it was inconceivable that the parties to this procedure intended any such thing. The intention is as clear as anything can be that the people of Missouri as well as the federal government and even the Indian tribes themselves, wanted the Missouri river fixed as the boundary of the state from the Kansas river north, and every object sought to be obtained by so fixing the boundary would have been defeated by leaving a section of the boundary amounting to two and a half miles, more or less, uncertain and undetermined. As is said in the Missouri Appeals case (Cooley v. Golden, rec. 76):

"It would be unreasonable to suppose that Congress intended to limit the extension of the territorial jurisdiction of the state of Missouri to the bank of the Missouri, and thus leave a sort of neutral territory between the Missouri shore and the middle of the channel of the river over which neither states of Missouri nor Nebraska had jurisdiction."

Besides this, suppose the facts are as contended for by the complainant at present and that the old line of the state did conform to the left bank of the river for a distance of two and a half or three miles, and then Congress and the legislature of Missouri enacted that the territory of Missouri should be extended westward to the Missouri river at all points north of the Kansas river. We submit that even then, under authority of opinion of Mr. Justice BREWER (St. Joseph R. R. Co. v. Devereux, 41 Fed. 14) and the many authorities therein cited, that the line of the state of Missouri from that time forward would be the center of the main channel of the river Missouri.

Justice BREWER says:

RECORD 80. "Now, the contention is that by this act the

western boundary was fixed at the east bank of the river. This, I think, is a mistake; and that the center of the channel is the boundary-line, and the limit of the cession made by this act. It will be seen that the petition was for a tract bounded by the middle of the channel of the Missouri river, and the grant of jurisdiction was over the lands 'between' the old state line and the 'Missouri river'; and this grant was made, and its boundary fixed, obviously, in response to the petition." . . .

RECORD 82. "And upon this the supreme court adjudged the boundary the center of the channel, saying, in the opinion:

"'Many authorities resting on adjudged cases have been adduced to us in the printed argument presented by the counsel of the defendant in error, to show that from the days of Sir Matthew Hale to the present time all grants of land bounded by fresh-water rivers, where the expressions designating the water-line are general, confer the proprietorship on the grantee to the middle thread of the stream, and entitle him to the accretions. We think this, as a general rule, too well settled, as part of the American and English law of real property, to be open to discussion.'" . . .

RECORD 83. "Counsel say that was a cession from a state to the general government; this, a cession from the general government to the state; that a cession of all 'northwest of the river'; this, of all between a fixed line and the river; and from this similarity insist that that case is decisive of this. That there is similarity must be conceded; and yet there is the distinction suggested by me in the fore part of this opinion. One is only a cession—a grant—WHILE THE OTHER IS ALSO A GOVERNMENTAL DESIGNATION OF A BOUNDARY. Further, the language of the description is not identical. One is—and this in that which is only a grant—'territory northwest of the river'; and the chief justice holds that that grants nothing of the river; that the description is conclusive. At best, this is mere dictum; for the jurisdiction of Indiana was sustained over the tract in question. Here the cession was to land between the old state line and the river, and the extension of the boundary was to the river, thus making that natural watercourse the boundary; and the general rules construing such words of cession, as subsequently affirmed by the supreme court in the cases cited *supra*, carry that boundary to the center of the channel. Beyond this are these minor considerations. In the case of Missouri v. Iowa, 7 How. 660, in which was decided a controversy between the two states as to their boundary, not involving the question here, the supreme court used this language in reference to this cession to the state of Missouri:

"'In February, 1831, the state of Missouri, by a memorial from the legislature to Congress, petitioned the United States for an addition of the country west of the line running from

the mouth of the Kansas north, and between said line and the Missouri river, alleging that it was a small slip of land that had been acquired, by the treaty of June 3, 1825, from the Kansas Indians. The petition declared that the line from the mouth of the Kansas north was about 100 miles long; that the country was settled, and rapidly settling, to its utmost verge; and that, as the Missouri river was the only great highway of this region, and could not be reached through a country inhabited by Indians, and being without roads, a cession of it to that state was necessary and proper. June 7, 1836, Congress acceded to the request of Missouri, and granted to that state all jurisdiction over the lands lying between its then western line and the Missouri river; making the river the western boundary. But the accession was not to take effect until the Indian title to the country was extinguished.' "

"Of course, this is no more authoritative than the dictum of Chief Justice MARSHALL; and yet it shows that the state of Missouri sought the only watercourse as the highway of its western border, and that Congress acceded to the request.

"Again, in the act admitting the territory of Nebraska into the Union as a state, the description of its boundary seems to recognize the channel of the Missouri river as the northwest corner of the state of Missouri.

"I need add nothing more to express the conclusions to which I have come. I think the center of the channel is the boundary-line between the two states."

We think no clearer statement of the whole controversy can be made than is contained in this opinion of Mr. Justice BREWER. It not only states the proposition of law in a clear and forceful way, but gives its application to the facts in this case in a manner which cannot be controverted. The opinion has more than the force of a mere declaration of law; it is practically an adjudication of the question involved in this entire case in a controversy existing between a county of Missouri and a county of Kansas, because as clearly appears from the opinion in the Devereux case, if the Doniphan county bridge was not assessable in the state of Kansas it was assessable in the state of Misouri, and whatever part of it was not assessable in one state was assessable in the other. We deem it wholly unnecessary, in view of this decision of the court, accepted and acted upon by the authorities of the state of Missouri for many years, to cite additional authorities upon the mere question of law involved, which is that all grants of land designating a water line as a boundary in general terms, carry the boundary-line to the middle thread of the stream and entitle

the proprietors on either side to all accretions on their respective sides of the stream to the thread line of such river.

We submit, therefore, that on the facts contended for by the complainant the boundary-line between the states of Missouri and Kansas, at all points north of the mouth of the Kansas river, must be held to be the center of the Missouri river, and that this is true regardless of the fact of whether the old line was at or near the left bank of the river or whether it was farther to the east. In addition to the evidence of the original historical instruments cited above we insist that the conduct of the state of Missouri, the general understanding exists among all of the people of both states in this vicinity and the exercise of jurisdiction by each of the parties to the suit according to this understanding, at all times since the organization of the territory of Kansas, would establish said line in the center of the Missouri river even if there were no other evidence or authority for such establishment of the line.

MAPS AND CHARTS.

It is a remarkable fact that no maps or charts have been advanced by complainant to throw any light on the issue of fact raised by the complainant or at about the time of the change in boundary. The plat attached to complainant's petition is disputed as to its accuracy by the defendant. The pleadings squarely raise an issue as to the truthfulness and accuracy of this map. No testimony is introduced to explain it or to prove it. It stands exactly as does any other allegation in the case which has been controverted and not proved. It is apparently a plat made to illustrate the complainant's position and is as hard to establish as is the complainant's case in chief.

The only thing in the record approaching the dignity of a map which in any way supports complainant's claim is the World's Fair map of Kansas City (rec. 120), made by the witness Tuttle, and it is passing strange indeed that this map, made as late as 1904, is the only map of record evidence that can be found giving any importance to the Indian boundary-line above the mouth of the Kansas river. The cross-examination of Mr. Tuttle, however (rec. 35-38 and 39-42), clearly discredits this map. Mr. Tuttle admits that it was made for the purposes of exhibition or advertising Kansas City at the World's Fair and that no particular attention was given to the outlying lines or boundaries of the vicinity. While he says

that Mr. Merriweather did not direct the work, neither did he, Mr. Tuttle, and that he did consult various maps and plats made by himself and assistants under the employ of Mr. Merriweather in prior years. It is fair to conclude from the record that Mr. Merriweather is interested in some way in the land controversies existing along the Missouri river. Mr. Tuttle admits that he has been employed to make many maps and plats for him and that Merriweather was consulted in making this map. (Rec. 44.) It is fair also to assume from these additional facts that plats and maps made for Mr. Merriweather were made for his purposes and conformed to his wishes. Mr. Merriweather, so far as the record discloses, is the only person in the state of Missouri who ever thought the old boundary-line had any existence after the act of Congress and its approval by the legislature of Missouri in 1837. County officers, the courts of the state and the governor have ever since that time ignored it as a state boundary. It is not strange, therefore, that Mr. Tuttle's survey, made in 1904, in the outlying districts, where no particular attention was paid to the accuracy of the same, accords with Mr. Merriweather's idea of the old state boundary. In this situation of the evidence, it certainly would not be amiss for those interested in the suit to adopt the now world-wide motto of the state of Missouri and demand "to be shown."

The only map or field notes of any particular value in this controversy are the plat of township 50, range 33 west of the fifth principal meridian, by Charles Powell, June, 1819 (rec. 109), and the field notes of the Sullivan survey of 1816 (rec. 110), and the field notes of John Lampton, December, 1846 (rec. 117). The plat of township 50, range 33 west of the fifth principal meridian, by the same surveyor, made about the same time (rec. 116), is also of interest.

Powell's plat of the section and township (15-50-33), in which it is alleged by complainant the island is situated, shows that the meridian line north from the Kansas river in 1819 did not touch the river or the river bank at any place, and there certainly was land at that time between that line and the river over which the territory of Missouri could have been extended. The "sluice" or "slough" mentioned by Sullivan (rec. 110) is clearly shown, and it clearly appears, as it does from the Sullivan field notes, that it was a tract of low land or

swamp such as frequently occurs near the Missouri river. This plat can fairly be taken to be in conformity in all ways with the Sullivan field notes. The river in the three years from 1816 to 1819 had not changed materially. In this connection, the field notes of John Lampton, December, 1846, nine years after the change of boundaries (rec. 117) are of some interest.

It will be remembered that sections 10, 15 and 22 of the township in question, according to the old survey, were fractional. Section 10 was above the point in dispute on the river, section 15 is supposed to be directly opposite the disputed territory, and 22 south or below it, and in proximity to the mouth of the Kansas river. Lampton finds the corners of fractional sections 10 and 15 (rec. 117), and runs south on the old marked line of the old west boundary. He sets a post (rec. 117), as a corner of section 10, 242 rods south (60.5 chains). He sets the southwest corner of section 10 near the bank of the Missouri river. While he encounters the west bank of the Missouri river near the west line of section 10, the important thing is that he shows (rec. 118) that he goes to the corner of sections 14, 15, 22 and 23 and from there runs between sections 15 and 22 west 48 chains, or 192 rods, to the left bank of the Missouri river. The Sullivan and Powell surveys (rec. 109, 110) show this distance to be 49.4 chains, or 198.6 rods, and records that he "is near this river," so the difference from where the river was in 1816 and in 1846, nine years from the change of the boundary, was not more than 6.6 rods.

Conceding then that each of the three surveyors attached the same significance to the term "river bank," the difference from 1816 to 1840, was about eighty feet. Considering the condition of the soil there as shown by all of the surveys, the low, swampy land, this was not a great change and certainly does not sustain the view of the complainant in this case. The same may be said of the other plats made of this congressional township by later surveyors. An examination of these plats (rec. 114, 116) shows that the surveyor does not attempt to plat the entire course of the Missouri river, its current or its banks. In the field notes, where any are appended, these surveyors refer to "intercepting" the banks of the river, and the plat shows lines indicating the river at certain parts of section 15. There is nothing, however, to indicate what the sur-

veyor meant by the term "river bank." In the loose parlance of common usage, and so far as shown in the parlance of the average county surveyor, the "bank of the river" may mean various things. It may mean the great decline from the surrounding country which marks the line between the valley of the river and the higher country, or it may mean the smaller and steeper decline usually between the water and the river bluffs mentioned before, which marks the water edge in the highest flood season, or the river bank may mean the water's edge when the river is at its normal state. In either of these cases, it would be proper for the surveyor to indicate all of the low lands, swamps, rivulets and bayous along the river's vicinity by the term "river banks," and the curved lines indicating the river bottoms. The point is that none of these plats attempt to show where the meridian line of the channel of the Missouri river was in 1836.

It would be as highly proper for Congress and the state of Missouri to extend the jurisdiction of the state across such swamps, morasses, valleys, sluices, and other low and uncultivatable lands as over any other class of territory. Indeed, it must appear from these plats and the character of the land indicated in the record that in the plentitude of wild lands existing in the state of Missouri in 1836, little attention was paid to the uncultivatable and practically valueless lands along the Missouri river. Then, as now, the important question was the exercise of jurisdiction of the wild lands upon either side of the Missouri, and it must be clear from all of this that the intention of Congress, as well as of the state of Missouri, was to have a governmental act fixing the boundary between the state of Missouri and the wild territory to the west, and this act of Congress when taken did fix that boundary at the center of the river. It is an important fact that in all the plats introduced by complainant to sustain its view, every surveyor from 1836 down until the World's Fair map was made in 1904, like the other county and state officers of the state of Missouri, referred to the line now claimed to be the state line as the "former boundary of Missouri," "the old Indian boundary-line," and in like terms, and there is lacking a scrap of evidence to show that any county surveyor or any other person ever thought that the state line was other than the thread of the Missouri river channel. One thing is certain, the center of the channel must

have been the line until the center of the Kansas river was reached, or until the old line intercepted the middle of the channel. It is not even claimed by complainant that the river channel touched the old line at any place in 1820 or in 1836.

II.

That the state of Missouri, having accepted such determination of its boundary, and all of the officials and people of the state having acted in accordance therewith since 1836 until the present time, and her sister states of Kansas and Nebraska having also acted on such understanding, such boundary-line of the state of Missouri became fixed on the thread of the Missouri river, and such boundary cannot now be questioned by the state of Missouri.

The discussion of point 1 in this brief really covers the second point. It is not disputed that Missouri, Kansas and Nebraska have always considered the boundary-line to be the middle of the Missouri river. As set forth in the statement herein, each of the Missouri counties bordering on the Missouri river, according to the statutes of the state, extended to the middle of the river for a part of their boundary-line. Platt county occupies the southern part of the Platt Purchase. Clay county was the Missouri county immediately east of the old state line. Jackson county was immediately south of Clay county, running to a northwest point which terminates at the mouth of the Kansas river in the middle of the Missouri river. It will thus be seen that the borders of these three counties touch the Missouri river at every point from the mouth of the Kansas river north to the northernmost part of Platt and Clay counties, which takes the boundary-line beyond the point of dispute; and we now repeat what the statutes of Missouri clearly show (rec. 58, 73, 84, 85) that a tracing of the river borders of these three counties would trace the state line in the middle of the river from the mouth of the Kansas to the north line of Platt and Clay counties. Not only this, but in section 5177 of the Missouri statutes, defining the borders of Clay county (Rec. 73), the statute distinctly says that the western boundary of Clay county shall "run thence south with said line (the old state line) to the middle of the main channel of the Missouri river." If the old state line were definitely run, as it is claimed by Sullivan, this would take the west line of Clay county to the very center of the mouth of the Kansas

river in the middle of the Missouri river. Again, in section 5198, defining the borders of Platt county, the statute continues:

"Beginning in the middle of the main channel of the Missouri river, at a point where a prolongation south of the old boundary-line of the state would intersect the same; thence north with said boundary-line to the line run and marked by Matthew M. Hughes, under an act of the general assembly of 1838 and 1839; thence west with said line to the middle of the main channel of the Missouri river; thence down said river, in the middle of the main channel thereof to the place of beginning." (Rec. 73.)

These statutes were evidently passed soon after the Platt Purchase was annexed to Missouri for the purpose of arranging the new counties and defining the borders of the old.

We ask attention of the court also to the correspondence between the governors of the two states (rec. 88-91) for the purpose of noting that the conflict of authority or controversy as to jurisdiction consisted in an attempt to locate the middle channel of the river and not over the fact that as to whether the Missouri river constituted the boundary. It is conceded in all the correspondence that the Missouri river is the boundary. These facts being true, and such boundary-lines have been recognized by the courts, as stated in point 1, we submit that the question of what constitutes the boundary between Kansas and Missouri above the mouth of the Kansas river is not open to inquiry, and brings us to the question as to whether the middle of the present current of the stream is the boundary, or whether the middle of the deserted river bed is the boundary. We discuss this question under point 3.

III.

Where a river is declared to be the boundary between states, if such river suddenly change its course or desert the original channel as the result of a great flood or what is commonly known as an avulsion, the boundary between such states remains in the middle of the deserted river bed, but if the river change imperceptibly, from natural causes, the river as it runs continues to be the boundary between the two states.

In the case of Cooley v. Golden, 52 Mo. App. Rep. 229 (rec. 77), the court states the rule as follows:

"It is not contended, as we understand it, that the change

of the course of the river in 1867 effected a change of the boundary-line between the two states as it was fixed in the ceding act, for, if it were, such contention could not be sustained, because it is plain to be seen that the allowance of such consequences might result most disastrously to the geography of the state. The law seems to be well settled that when a river is declared to be the boundary between states, although it may change imperceptibly from natural causes, the river as it runs continues to be the boundary."

A number of familiar cases are cited in support of this doctrine, among others, Iowa v. Nebraska, 143 U. S. 359.

Referring again to an opinion of Mr. Justice BREWER, we find in that case the law on this point very clearly and pointedly stated. We quote from the opinion as follows:

"It is settled law that when grants of land border on running water, and the banks are changed by that gradual process known as accretion, the riparian owner's boundary-line still remains the stream, although, during the years, by this accretion, the actual area of his possessions may vary. In New Orleans v. United States, 35 U. S., 10 Pet. 662, 717 (9:573, 594), this court said: 'The question is well settled at common law, that the person whose land is bounded by a stream of water which changes its course gradually by alluvial formations, shall still hold by the same boundary, including the accumulated soil. No other rule can be applied on just principles. Every proprietor whose land is thus bounded is subject to loss by the same means which may add to his territory; and as he is without remedy for his loss in this way, he cannot be held accountable for his gain.' See, also, Jones v. Soulard, 65 U. S., 24 How. 41 (16:604); Banks v. Ogden, 69 U. S., 2 Wall. 57 (17:818); Saulet v. Shepherd, 71 U. S., 4 Wall. 602 (18:442); St. Clair County v. Lovington, 90 U. S., 23 Wall. 46 (23:59); Jefferis v. East Omaha Land Co., 134 U. S. (33:872).

. . . . . .

"These propositions, which are universally recognized as correct where the boundaries of private property touch on streams, are in like manner recognized where the boundaries between states or nations are, by prescription or treaty, found in running water. Accretion, no matter to which side it adds ground, leaves the boundary still the center of the channel. Avulsion has no effect on boundary, but leaves it in the center of the old channel. In 8 Ops. Atty-gen. 175, 177, this matter received exhaustive consideration. A dispute arose between our government and Mexico, in consequence of changes in the Rio Bravo. The matter having been referred to Attorney-

general Cushing, he replied at length. We quote largely from that opinion. After stating the case, he proceeds:

" 'With such conditions, whatever changes happen to either bank of the river by accretion on the one or degradation of the other, that is, by gradual, and, as it were, insensible accession or abstraction of mere particles, the river as it runs continues to be the boundary. One country may, in process of time, lose a little of its territory, and the other gain a little, but the territorial relations cannot be reversed by such imperceptible mutations in the course of the river. The general aspect of things remains unchanged. And the convenience of allowing the river to retain its previous function, notwithstanding such insensible changes in its course, or in either of its banks, outweighs the inconveniences, even to the injured party, involved in a detriment, which, happening gradually, is inappreciable, in the successive moments of its progression.

" 'But, on the other hand, if, deserting its original bed, the river forces for itself a new channel in another direction, then the nation, through whose territory the river thus breaks its way, suffers injury by the loss of territory greater than the benefit of retaining the natural river boundary, and that boundary remains in the middle of the deserted river bed. For, in truth, just as a stone pillar constitutes a boundary, not because it is a stone, but because of the place in which it stands, so a river is made the limit of nations, not because it is running water bearing a certain geographical name, but because it is water flowing in a given channel, and within given banks, which are the real international boundary.' "

We think no further comment on the law contended for under this point is necessary.

Now a few words concerning the evidence as to how the change in the river current took place which is under consideration in this case. It is not claimed by the complainant that the river changed its bed suddenly as the result of a flood or that what is termed avulsion occurred. It is stated in the complaint (rec. 4):

"Complainant states that after the 28th day of March, 1837, the Missouri river, at the point in question, moved toward the east by a process of cutting away its eastern or left bank, and by its waters taking partially the course of the original slough as shown upon the original survey made by John C. Sullivan."

It will be noted here that the claim was made that the island was caused by the river pursuing "*partially*" the course of the old slough. This contention, however, is merely a matter of opinion and not proof. The complainant offers not the slight-

est evidence to show that the island was formed in this way or that the channel of the river was so changed. The point is that it is conceded that the river changed by a process of cutting away its eastern or left bank. The field-notes and plat of Lampton (rec. 116-117) compared with those of Sullivan and Powell (rec. 110, 109) show that in 1846 no material change had occurred in the bed of the river or its current, except that it probably had moved slightly toward the east, a distance not to exceed eighty feet. None of the plats made between the dates of 1816 and 1846 introduced by complainant show any island at all. In addition to this, we have the direct testimony of the steamboat pilot, George A. Schreiner (rec. 94), who was on the river daily from 1857 until 1861. The length of time intervening between the survey of Lampton in 1846 and the time of Schreiner's familiarity with the river is just about the same time as that intervening between 1837, when the boundaries were changed and the time of the Lampton survey. Mr. Schreiner is positive in his testimony that there was no island in 1857 (rec. 95), but there was a small sand-bar just above where Goose Island is at the present time, and that the main channel of the river was where Goose Island is at present. If this testimony is true, and it is undisputed, the island must have been formed for the most part since 1857. In other words, the island is the result of alluvial deposits or additions to the sand-bar spoken of by Mr. Schreiner. Mr. Schreiner also testifies to the gradual change of the river channel toward the north and east (rec. 95). Upon page 96 of the record, Mr. Schreiner describes in detail the formation of Goose Island and Grand Island as a result of the high water from time to time in the Kaw, the creation of the back water in the Missouri and the consequent deposit and formation of sand-bars made by such conditions. We quote from Mr. Schreiner's evidence as follows (rec. 96-97):

"A. Every high water that come in the Kaw (Kansas) it would create back-water, and that helped the formation of the Goose Island, and then when that built up from year to year, when the Missouri river would come up, and the Kaw was not up, it overflowed and left sediment, and kept building up that bar, as the river cut over on the other side it formed that island, kept building it up from year to year, until it got up to where it now is, when it built up the island right in where the main channel used to be, why, some time the high water in the

Kaw river would cut through, cut that slough between what had formed as an island and this shore, and in the 1903 flood, when the Kaw river was so high, that left quite considerable sediment on this side of the river.

"Q. On the Wyandotte side?

"A. Yes, sir. Since that, I noticed, about six weeks ago, I was up to take a look at the lay of the land, I found that the Missouri river had cut considerable of a width, in cutting off the main shore on the Wyandotte side, cutting in there a perpendicular bank, and the bank caving, and also cut away on this side, on the inside of the island, cutting away there, so that the channel through there—not the channel, but the shallow water that still comes through there, is considerable of a width now from what it used to be. The island had been cut away quite considerable, too. It was wider in towards this shore.

"Q. When that bar formed, on which afterwards became Goose Island, it formed right out from the mainland, did it, and was a wide bar connected with the mainland, does it?

"A. Yes; but still there was some low part, where some water came through, and it came in kind of a—like this shape—where it was cutting that bar away, that bar, or Goose Island was holding its own where the willows and cottonwoods had grown—was holding its own.

"Q. A good part of the year, would it be this bar, would it be connected right with the mainland?

"A. No; over to Goose Island."

We think the evidence is about as conclusive as it can be as to how this island was formed and how it came that the bed of the river gradually changed toward the east, and under these facts and the authority of Nebraska v. Iowa, *supra*, it must be held that the middle of the channel east of the island is now the state line.

IV.

Where a river is the boundary-line between two states, the jurisdiction of said states is concurrent over the channel of the river to the meridian line of said channel, but where an island arises and exists on the bed of said river and the main channel of the river flows to one side only of the island, such island is within the jurisdiction of the state nearest to which it is located.

It is unnecessary to repeat the evidence commented on in division III of this brief and upon which we rely to sustain both points three and four. The testimony of Mr. Schreiner

is the only reliable testimony in the record concerning the location of the island in relation to where the main channel of the stream was in 1837, and the only reliable testimony as to the manner in which the island was formed. This, taken in connection with a comparison of the field-notes of Sullivan and Lampton, as above stated, and the further fact that none of the plats introduced by the complainant prior to the year 1846 show any island at all, it seems to us to settle conclusively the manner of the island's formation and its location in the river. The question remains as to whether jurisdiction of the states over said island is concurrent, or whether it is within the jurisdiction of either of the parties to this suit. We think it is satisfactorily shown and must be held that the island is west of the present state line, and therefore within the jurisdiction of Kansas.

We submit that it would not be possible for the court to find that the river changed its course as to the points in controversy herein from any unnatural or sudden cause, or an avulsion, because the facts are not so pleaded in the complaint. The complainant makes no such claim.

First, we desire to call the attention of the court to the decisions of the courts of the state of Missouri touching on this question. In the case of the State of Missouri v. Charles Keane, 84 Mo. App. 127, the several points of law decided were as follows:

"Where a navigable river is the boundary between two states the exact line of that boundary is the center of a navigable channel as distinguished from the center of the river from bank to bank.

"If there is a gradual change in the channel of the river as it runs the center thereof will remain the boundary; but a sudden avulsion abandoning the old channel with a new course for the stream will leave the center of the old channel the boundary.

"Where there has been a change of the channel the boundary will remain in the center, from bank to bank, of the old river bed in the absence of evidence locating the old channel before the change.

"Where defendant's saloon was located west of the center of the old navigable channel of the Missouri river on the west boundary of Platte county, the circuit court of that county had no jurisdiction to try him for selling liquor without license since the act was committed in the state of Kansas."

Unfortunately the record does not show the exact point on

the river where the controversy arose, or we might have an adjudication of the very question here involved, as it will be remembered the county line of Platte county begins at the point where the old state line intercepts the middle channel of the Missouri river.

In the case of McBaine v. Johnson, 155 Mo. 203, the supreme court of Missouri passed upon the right of riparian owners to islands formed upon the bed of the Missouri river where the different claimants were residents of different counties, and in that case the court held:

"An island in the Missouri river, on the north side of the channel, formed by the gradual recession of the river towards the south, becomes the property of the riparian owner on the north shore, though at the time of his original patent from the United States for the land on the north shore the land on which the island in question formed was a part of the south shore.

"Since the dividing line between two counties separated by a river is the main channel of the river, and such dividing line changes with the gradual and imperceptible changes of the channel, an island formed by accretion in a river, on the north side of the main channel, lies within the county bordering on the north side, though the land on which it formed was originally on the south side of the channel."

"If this land is an accretion to the land patented to Smith, the plaintiff, as Smith's grantee, is clearly entitled to it. True, the location of this land is at a point which, in 1817, when the United States survey was made, was within the boundary of Moniteau county, because it was then south of the thread or middle of the main channel of the river. But, as the channel of the river changed, so the dividing line between Boone and Moniteau counties necessarily changed. City of St. Louis v. Rutz, 138 U. S. 226, loc. cit. 245, 11 Sup. Ct. 344, 34 L. Ed. 949. And this property thus fell within the boundaries of Boone county, as the court below properly held. The United States having ceded to Smith the land lying on the bank of the river, when the river receded, and this land was thereby formed, it became an accretion to the Smith land. The supreme court of the United States, in City of St. Louis v. Rutz, 138 U. S. loc. cit. 245, 11 Sup. Ct. 344, 34 L. Ed. 949, said: 'It is laid down by all the authorities that if an island or dry land forms upon that part of the bed of a river which is owned in fee by the riparian proprietor, the same is the property of such riparian proprietor. He retains the title to the land previously owned by him, with the new deposits thereon.' "

In the case of East Omaha Land Co. v. Hansen, 117 Iowa, 97, 90 N. W. Rep. 706, the supreme court of Iowa discussed the

question under consideration relative to an island that sprang up in the river near the point where the controversy decided in Nebraska v. Iowa arose. The syllabus of the case is as follows:

"Where an island springs up in the midst of a stream, it is an accretion to the soil in the bed of the river, and not to the land of the riparian owner."

It is necessary to consult the report and the plat therein in order to understand the case. In the opinion the court said:

"There is no doubt that an island or sand-bar formed in the river west of plaintiff's lot many years prior to the time this controversy arose, and it is equally clear that a considerable quantity of land accreted to this island on the west as the river cut into the Nebraska bank. For many years there was a channel east of this island or bar, and only during comparatively recent years had this channel been closed. The island was first joined to the main-land at the northern extremity thereof, far above lot 2. The bar or island was the highest tract of land in this vicinity, and during the historic flood of the year 1881, which covered the entire Missouri river bottoms, it was above water. This island was formed between the years 1862 and 1870, and the channel of the river on the east side thereof was not filled up until about the year 1890, when plaintiff graded two streets across it, and drained the water therefrom by artificial means. Surely it will not do to say, on this statement of the record, that the land in controversy accreted to lot 2. As in the Holman case, the additions to plaintiff's land have resulted from the formation of the island, and are a part thereof. See, also, Bigelow v. Hoover, 85 Iowa, 161, 52 N. W. 124, 39 Am. St. Rep. 296; Smith v. Miller, 105 Iowa, 688, 70 N. W. 123, 75 N. W. 499; Cooley v. Golden (Mo.), 23 S. W. 100, 21 L. R. A. 300."

The supreme court of Nebraska has also considered this question, De Long v. Olsen, 63 Neb. 331 (88 N. W. 514), but the opinion is valuable chiefly as deciding that the doctrine of accretions applies to the Missouri river. We quote from the opinion, as follows:

"It is contended that the lands in controversy are not accretions; that the changes in the Missouri river are 'too perceptible and too rapid to allow the land formed thereby to be called accretions.' This question was fully considered by the supreme court of the United States in Nebraska v. Iowa, 143 U. S. 359, 12 Sup. Ct. 396, 36 L. Ed. 186. In the opinion by Mr. Justice BREWER, the conditions causing the changes in the banks of the river are fully stated. The same conditions are established by

the evidence in this case, and this case is controlled by the conclusions there announced: 'The law of accretions applies to the Missouri river, notwithstanding that owing to the swiftness of its current and the softness of its banks, the changes are more rapid and extensive than in most other rivers.' "

Should it be contended that the evidence does not definitely show where the old channel of the river was, but does show that the channel changed in such a way as to leave the state line in the old channel, then we contend that the rule announced in the case of Missouri v. Keane, stated above, must apply, and that, in the absence of evidence locating the old channel before the change, the boundary will remain the center between the banks of the old river bed. (Rec. 133.)

We submit, therefore, that upon all of the evidence there is nothing to sustain the contention of the complainant and the demurrer to her bill must be sustained. We further submit that the evidence fairly shows that the island was formed upon the river bed and is now west of the state line and within the jurisdiction of Kansas.

We wish to thank the court for receiving this brief after the submission of the case, the time of argument having been overlooked by us through an unfortunate misunderstanding as to the order of the case on the docket. We realize, however, that this brief has been hastily prepared, and is, therefore, not as full a citation of authorities as we had intended to make in presenting the case. The questions involved are largely questions of fact and we believe the contention of the defendant is fully sustained. We therefore respectfully ask judgment on the defendant's cross-petition as prayed for therein.

Respectfully submitted.

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Supreme Court, U. S.
FILED.
FEB 18 1908
JAMES H. McKENNEY,

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1906.

STATE OF MISSOURI,
Complainant,
vs.
STATE OF KANSAS,
Defendant.

No. 6
(Original)

STATEMENT, ARGUMENT AND BRIEF IN BEHALF OF COMPLAINANT.

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No. 6
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STATEMENT, ARGUMENT AND BRIEF IN BEHALF OF COMPLAINANT.

STATEMENT.

This is a controversy relating to the proper location of the boundary line between the states of Missouri and Kansas for about two and one-half (2½) or (3) miles just north of and adjacent to Kansas City, Missouri, and Kansas City, Kansas. If the situation were in a sparsely settled and unimportant locality it could hardly be considered of sufficient dignity or importance to require the attention of this court; but this is not the case. The locality is one of great and increasing importance. Immense interests are being concentrated at this point and two great cities

have sprung up and are growing with marvelous rapidity. It is therefore of the utmost importance to complainant and defendant that the definite location of this boundary line be finally determined.

When Missouri was organized and admitted to the union its western boundary was defined as a meridian line projecting due north through the middle of the mouth of the Kansas river at the point where it empties into the Missouri river. The line was surveyed and monumented north of the Missouri river by John C. Sullivan in 1816. He did not continue the line, which had been brought up to the river from the south, in a definite straight line as we should have expected from the location provided by law, but his field notes and survey show that he began, on the bank of the Missouri river opposite the mouth of the Kansas river at a point which is one thousand three hundred and twenty (1,320) feet ~~west~~ of the line which terminated on the south bank of the river. He extended the line from this beginning point due north and his field notes show that for the first three miles the line was run *near the bank* of the river. It also appears from the plat and from the field notes of this surveyor, that in the running of the line for these first three miles John C. Sullivan crossed twice a branch of the river, or slough, six hundred and sixty (660) feet wide. He meandered this slough as a navigable stream. The complainant contends that this line as located and monumented by John C. Sullivan is still the true boundary line between the states of Missouri and Kansas up to the point where the Platte purchase began, as shown by the official survey of the locality made in 1839. That point is about three miles north of the point at which John C. Sullivan began his survey on the bank of the river in 1816.

It is admitted by the pleadings, and by all of the evidence, that the land over which jurisdiction is disputed all lies east of this Sullivan line, and that it was originally in the State of Missouri; but the defendant contends that this Sullivan line was all abrogated and changed by the proceedings which resulted in

what is known as the Platte purchase. Complainant admits that all of the land lying west of the Sullivan line, between the Sullivan line and the Missouri river in March, 1837, the time of the Platte purchase, was added to the State of Missouri and its jurisdiction extended over the same. This resulted in making the Missouri river the western boundary line of Missouri at all points where land was purchased and added to said state.

The object and main features of the whole negotiations, which resulted in this Platte purchase, were to acquire additional territory so as to extend the western boundary of Missouri to include this additional territory and reach the Missouri river. There is nothing anywhere in the laws of Missouri or the act of Congress which in any way indicates any change in the western boundary of Missouri except where land was added to Missouri so that said line could be extended towards the west. If, therefore, at the point in question there was no land acquired and added to Missouri there was no change in the line at that point. This brings us to a statement of the only disputed fact in the controversy: Was there any land at the point in question, west of the Sullivan line, added to Missouri by the Platte purchase? It is admitted by complainant that wherever land was so added the Missouri river was adopted as the western boundary of the state, and as corollary of that proposition complainant also admits that where the Missouri river was adopted as the boundary of the state such boundary was changeable and variable at least to the extent of the land added. We do not admit, however, that any such changes in the location of the river could affect the status of land previously located in Missouri, and bounded by a definite straight line such as the Sullivan line was. This territory, which was a part of the State of Missouri from the time it was admitted to the union up until the consummation of the Platte purchase in 1837, had its status fixed. There was nothing changeable or variable in its western boundary and there is nothing in the law changing and altering this boundary which in any way indicates

the intention of adopting a boundary which might deprive Missouri of a portion of its territory.

In order to show that there was no land added to Missouri at the point in question by the Platte purchase, in other words that the line of Missouri was not extended at that point, the complainant introduced all of the official surveys and field notes which have ever been made of the locality.

The reason for the off-set made in the line of John C. Sullivan does not appear, but the complainant is making no question as to the correctness of John C. Sullivan's line. We say argumentatively that it appears from the location of the rivers at that point that it was impractical for John C. Sullivan to make his line and erect his monuments if he continued the meridian line designated as the western boundary of Missouri. It would have been in the middle of the Missouri river for the first three miles. It was, therefore, necessary for him, in order to obtain a location for his survey and monuments, to make the off-set that he did make and his field notes show that he began on the bank of the river and for three miles ran near the river. This was in 1816.

The next survey was made by Charles Powell in 1819. He had a contract to sectionize the township. He adopted John C. Sullivan's line as the western boundary and his plat is shown as "Exhibit 1" in the record. His field notes speak of this eastern branch of the river, or slough, as the Missouri river. The district in dispute includes most of the territory shown within the boundaries of the slough, or eastern branch of the river, as it appears on this "Exhibit 1," and also a portion of Section 22 lying just south of the slough.

It is a physical fact resulting from the laws of gravitation, of which the court will take judicial notice, that the bends in all streams, running through alluvial soil, move down stream. There is ample evidence in the record to support the theory that in this instance the river followed this well-known natural law. It results, therefore, that the Sullivan line, which in 1816 was near the

river, was in the river long before 1837, the date of the Platte purchase. There is no survey in existence of the exact date of the Platte purchase; however, a survey was ordered soon thereafter and was made by Lisbon Applegate in 1839. A plat of this survey, with the certificate thereof, is shown in the record as "Exhibit 4." The field notes of this surveyor are in the record and show that at the point where the survey reaches the Sullivan line the Missouri river runs southeast. This survey of Lisbon Applegate, which is the first official survey of the land included in the Platte purchase, marks the definite point at which the change was made in the western boundary of Missouri. There was no change made south of this point and the Sullivan line therefore remains the boundary line of Missouri to-day.

Another official survey was made about ten years later and shows the bank of the river in 1847 at the exact point in question. This was just ten years subsequent to the Platte purchase. A plat of this survey is shown as "Exhibit 6" in the record. It will be seen from this plat that the progressive tendency of the Missouri river, before referred to, continued up to the date of this survey. This is indicated by the slight jog in the bank of the Missouri river at the point where it crosses the Sullivan line. That portion west of the Sullivan line being marked as the bank of the river in 1840, while that portion east of the Sullivan line being marked as the bank of the river in 1847.

To make it clear that the Missouri river crossed this Sullivan line in 1837, the complainant introduced in evidence an official survey of the opposite side of the river made in 1855. A plat of that survey is shown in the record as "Exhibit 11." The field notes of that survey shows sycamore and cotton-wood trees on the bank of the river used as monuments and marking trees, some of these trees being twenty-six (26) inches in diameter. A sycamore tree is definitely located at a point almost opposite the mouth of the Line creek at the southeastern corner of the Platte purchase. Expert evidence upon the age of trees was introduced to show

that these trees were from twenty-five (25) to thirty-five (35) years of age so that they must have been growing at the point of location long before 1837. A map of Platte county was introduced and also a history of Platte county prepared by a very old resident of that county, who had been in the business of abstracter of titles for a great number of years and who had talked with the man who had made the original survey of Platte county, and this testimony shows that Platte county began at the point shown as the southeastern terminus upon this map, which is shown in the record as "Exhibit 15."

Defendant did not introduce any evidence to controvert these facts but relied upon the statements and indefinite references in resolution of Congress and of the general assembly of Missouri, not intended in any way to affect the point in question. These references frequently used the mouth of the Kaw (or Kansas) river as the southeastern terminus of the land to be acquired by the Platte purchase. But when the descriptions reach anything like definite form they begin at the point where the Sullivan line strikes the Missouri river, which is about three miles north of or above the mouth of the Kaw river. All the reasons for the change of the western boundary of Missouri fail when applied to this particular locality. The boundary at the point in question was already in the Missouri river. The citizens and land-owners to the east thereof could reach the river without crossing any intervening space and there was no land at that point to be added to the territory of the state. That portion of the boundary, having been a definite line, was not subject to the vicissitudes and changes incident to the line designated as the center of a navigable stream. Having been located as a straight line independent of the river never having been changed by any lawful authority it remains the State line to-day.

MAPS

TOO

LARGE

FOR

FILMING

ARGUMENT.

A more extended statement of the evidence than is made in the brief outline of facts hereinbefore given will serve to emphasize and make clear the real issue involved in this controversy between Missouri and Kansas.

THE WEST LINE OF THE STATE OF MISSOURI PRIOR TO 1837.

There is no dispute as to the location of the western boundary of Missouri for the two and one-half or three miles north of the mouth of the Kansas River, prior to 1837.

The constitution of the State of Missouri, adopted in 1820, reads in part as follows:

"We do declare, establish, ratify and confirm the following as the permanent boundaries of said state, that is to say: beginning in the middle of the Mississippi river on the parallel of thirty-six degrees of north latitude; thence * * *; thence west along the same to a point where the said parallel is intersected by a meridian line passing through the middle of the mouth of the Kansas River, where the same empties into the Missouri River; thence, from the point aforesaid, *north* along said meridian line, to the intersection of the parallel of latitude which passes through the rapids of the river Des Moines, making the said line correspond with the Indian boundary line; thence.* * *, etc." (P. 53.)

The west line of the state then, at the first, was this meridian line passing through the mouth of the Kansas river.

This line from the mouth of the Kansas river north was surveyed and located by John Sullivan, under government authority in 1816. The field notes of his survey are shown at page 110 of the record. There is no map in the record of this survey, but exhibit 1, opposite page 108, shows the line as run by him. This exhibit is map of the survey of Charles Powell, who was commissioned to run the section, and half section lines and meander the streams.

He did his work in 1819. The field notes of his work are shown beginning on page 111.

The authenticity of these surveys is admitted by the defendant State. In her answer (p. 8) she says:

"The defendant admits that in the year 1816 a certain line was surveyed by John C. Sullivan, as principal surveyor, and Samuel K. Colwell, as assistant surveyor under the authority of a letter for William Rector, surveyor of lands of the United States in the territories, now states of Illinois and Missouri, dated July 23, 1816, appointing the said Sullivan and Colwell to survey the boundary lines of the tract of the country north of the Missouri river * * * and that said line was afterwards adopted as the western boundary of the State of Missouri upon her admission to the union, so that the western boundary of said state at all points north of the Missouri river was a definite straight line running due north and south until the 28th day of March, 1837."

There is no doubt at all as to the exact location of this line north or the mouth of the Kansas river. The line should have been produced due north from the mouth of the Kansas. The constitution of Missouri of 1820, quoted from above, regarded the line as so run. As a matter of fact Sullivan set over at the mouth of the Kansas 1320 feet and ran his line due north from that point, thus making a jog in the west line of the state.

Daniel O'Flaherty, an old time surveyor had seen one of the original monuments on the Sullivan survey, and such monument showed the line located as in Exhibit 8, and as shown on the composite plat in this brief. (p. 108 and map opposite p. 120.)

Referring to plat (Exhibit 8), Mr. Tuttle, for 22 years a surveyor at and about Kansas City, testified concerning the line A-B on that map, and which is intended to show the state line to the south, the jog of 1320 feet and the line to the north (Sullivan's line, as follows, p. 33):

"Q. What does that line running between points "A" and "B" indicate, Mr. Tuttle? A. That is the southerly prolongation of the line between Platte and Clay counties, Missouri."

* * *

(P. 34): "Q. But if the present line between Platte County and Clay County, Missouri, north of the point 'A' is the ancient Indian boundary Sullivan line, then the line A-B would be a prolongation of the same line? A. That is true."

That this "old state line" laid off by Sullivan is the same line as that between Platte and Clay counties is made clear by the evidence. The defendant introduced several of the statutes of the State of Missouri. 1845, Platte County, it is provided (p. 69,) shall be bounded "beginning at the southwest corner of Clay County, thence with the western lines of Clay and Clinton Counties * * * *." and Clay is described as follows (after giving east line): "thence west to the old state line, thence south to the Missouri river, etc."

In 1855 (p. 70) the line is the same; Clay (after giving east line): "thence west with the subdivisional lines to the old state line, thence south on said line;" and Platte County as follows: "Beginning in the middle of the main channel of the Missouri river, at a point where a prolongation south of the old boundary line of the state would intersect the same, thence north with said boundary line to the line run and marked by Matthew H. Hughes."

So, when Platte County was created by act of the Missouri legislature in 1838, the same line—the old state line was made its eastern boundary. (P. 71.)

It is not necessary to quote the subsequent acts of the legislature which were in evidence. All make this "old state boundary line," the line between Clay and Platte Counties. (Pp. 72, 73.)

It is then made clear by the evidence just where the western line of the state of Missouri was by survey located prior to 1837.

WHAT CHANGE TOOK PLACE IN THE WEST LINE OF THE STATE OF MISSOURI IN 1837.

Under this heading we maintain:

1. That in 1836-7 the Missouri river had moved to the east

so far that the first two and one-half miles of the old west boundary line, surveyed by Sullivan, were in the river.

2. That on March 28, 1837, the land lying between the old state boundary and the Missouri river was added to the state, and no change was made in the boundary line except where land lay between the old state line and the river.

1. *In* 1836-7 *the Missouri River had moved to the east so far that the first two and one-half miles of the old west boundary line surveyed by Sullivan were in the river.*

Sullivan was close to the river as it ran at the time he surveyed his line. There is no other reason suggested for his having set over 1320 feet at the mouth of the Kansas river except that if he had attempted to run on due north, without such off-set, he would have been in the channel of the Missouri river .

He says in the field notes of his survey (p. 110): "This mile and the first near the banks of the Missouri river." And again, "Along mile No. 3, * * * still near the bank of the Missouri."

In 1840, Applegate made his survey of the lands lying west of the old line run by Sullivan. The map of that survey is Exhibit 4 (opposite p. 114). That map shows that the Missouri river, at that time, intersected the old line 25.25 chains south of the center line of section ten. The certificate attached to "Exhibit 4" shows that the left bank of the river was meandered by Applegate in the second quarter of 1840. The excerpt from Applegate's field notes, p. 115, corroborates the figures on the map.

The map "Exhibit 6" shows survey of Applegate and the survey of Lampton made in 1846. This map shows that in 1840 the old Sullivan line ran through the Missouri river from a point 25 chains south of the center line of section ten to a point south of the center line of section twenty-two. In 1846 the course of the river between these points had changed to the west; but not to any considerable distance.

The maps, "Exhibits 9 and 10" show the survey of land south and west of the Missouri river made in 1855. (Note that the sections are numbered on this map as of Township 10 south, Range 25 east, 6th P M. The north line of section 26 as shown on this plat is about coincident with the center line of section 10 as shown on the prior maps, Exhibit 6, etc.) These maps 9 and 10 show that the river had not changed to any great extent from the position it occupied in 1846.

The field notes of this survey (maps Exhibits 9 and 10) are shown on p. 124. Notice that in the course of these notes the surveyor says: "running east on true line along the south boundary of section 34, * * * right bank of Missouri river * * * cottonwood 26 in diam. bears S. 40° E. 29 links dist." And again, "North between sections 27 and 28, * * * 80 chains * * * a sycamore 26 in diam. bears S. 46½° W. 62 links distant." Speaking of the growth of trees Mr. Goodman, an expert testified (p. 103):

"In all my experience and in all my examining of trees I find the cottonwood will average in caliber about from * * * two-thirds to three-quarters inches * * * in extraordinary cases it is sometimes one inch. In extraordinary cases it is sometimes one inch, and sometimes as low as two-thirds of an inch, but generally from two-thirds to three-fourths of an inch." (P. 104.)

"Q. How does the growth of the sycamore compare with that of the cotton wood? A. Well, very nearly the same."

These trees then of 26 inches in diameter show that for about 25 years prior to 1855 the right bank of the river had not changed very much. All these facts show that by 1836 the old state line was in the river from some point not far south of the center line of section ten on south.

2. *On March 28, 1837, the land lying between the old state boundary and the Missouri river was added to the state, and no change was made in the boundary line except where land lay between the old state line and the river.*

The Act of Congress as passed provides (p. 67):

"That when the Indian title to all the land *lying between* the State of Missouri and the Missouri river shall be extinguished, the jurisdiction *over said lands* shall be hereby ceded to the State of Missouri, and the western boundary of said state shall be then *extended to the Missouri river.*"

And the legislature of Missouri declared her assent to this act. (P. 68.) It is clear from the reading of the act that the boundary of the state was not changed except where there were lands lying between the old boundary and the Missouri river, in which case the boundary was *"extended"* to the river. Since, therefore, the old boundary line was already in the stream for the first two and one-half miles north of the mouth of the Kansas river, no lands were added there and no change of boundary there took place.

EFFECT OF SUBSEQUENT LEGISLATION.

There is no evidence to support the contention that Missouri and Kansas have by a long course of conduct regarded the shifting channel of the Missouri river over these two and one-half miles as the border line between the states rather than the true north and south line. It requires the consent of the states and Congress to change a state boundary; so no change could be made without the concurrent action of all three sovereignties. But there is no action that the states have agreed upon any other than the true boundary. Kansas in framing her constitution made her east line in terms "the west line of the State of Missouri" (p. 84). Much stress was by Kansas at the hearing put upon the language of the several statutes of the State of Missouri giving the boundaries of the counties of Platte and Clay and Jackson in Missouri and of the State of Kansas giving boundaries of the counties of Wyandotte and Johnson in that state. The legislative acts can in no wise be regarded as attempts to define the boundaries of the state. Such boundaries could not be so defined. They, on the other hand, give the boundaries of these counties with reference to the land as

it at the time lay. The state line was in the Missouri river. There was no desire to take account, in fixing county boundaries, of land lying then within the river.

The determination of the true line as the Western boundary of Msisouri, at the point in question, depends entirely upon the construction of the terms of the Act of Congress of June 7th, 1836, hereinbefore quoted. By said act the Western boundary of the State *"was extended to the Missouri River,"* Missouri by an amendment to its constitution, adopted the line thus established but it did not cede or waive its rights of soil and jurisdiction over any portion of its original territory. It is established by the proof that at the point in dispute the western boundary of the State was already in the Missouri river.

In the case of *Howard vs. Ingersoll,* 13 Howard, U. S., 379, it was said:

"The rule is that where a power possesses a river and cedes the territory on the other side of it, making the river the boundary, that power retains the river, unless there is an express stipulation for the relinquishment of the rights of soil and jurisdiction over the bed of such river."

If there was anything doubtful or indefinite in the language of the act of June 7th, 1836, or in the line as established by it, we might refer to the subsequent acts of the parties affected thereby as well as to local conditions to aid us in determining a proper construction of what was meant by the act, but the language, itself, is plain and we need no other assistance.

As was said in the case of *Alabama vs. Georgia,* 64 U. S. 505:

"The contract of cession must be interpreted by the words of it, according to their received meaning and use in the language in which it is written, as that can be collected from judicial opinions concerning the rights of private persons upon rivers, and the writing of publicists in reference to the settlement of controversies between nations and states as to their ownership and jurisdiction on the soil of rivers within their banks and beds. Such authorities are to be found in cases in our own country and in those of every nation in Europe."

The language used by this court in the case of *State of Indiana vs. State of Kentucky*, 136 U. S., 479, is also applicable to the point under discussion. In that case it was said:

"Undoubtedly, in the present condition of the tract, it would be more convenient for the State of Indiana if the main river were held to be the proper boundary between the two states. That, however, is a matter for arrangement and settlement between the states themselves, with the consent of Congress. If, when Kentucky became a state on the 1st of June, 1792, the waters of the Ohio river ran between that tract, known as Green River Island, and the main body of the State of Indiana, her right to it follows from the fact that her jurisdiction extended at that time to low-water mark on the northwest side of the river. She succeeded to the ancient right and possession of Virginia, and they could not be affected by any subsequent change of the Ohio river, or by the fact that the channel in which the river once ran is now filled up from a variety of causes, natural and artificial, so that parties can pass on dry land from the tract in controversy to the State of Indiana. Its waters might so depart from its ancient channel as to leave on the opposite side of the river entire counties of Kentucky, and the principle upon which her jurisdiction yould then be determined is precisely that which must control in this case. *Missouri vs. Kentucky*, 78 U. S., 11; Wall 395, 401. Her dominion and jurisdiction continue as they existed at the time she was admitted into the union, unaffected by the action of the forces of nature upon the course of the river."

There is nothing in the contention by the State of Kansas that the acts of the officers of the State of Missouri was sufficient to establish the boundary line as contended for by Kansas. No such action was shown which could in any way be held as sufficient to establish any prescriptive rights so as to modify the true line as it exists by law. The officers of the state act in a discretionary manner whenever they attempt to act within the territory which is in dispute and their action is not the action of the state. (*State vs. Young*, 46 Vt., 565), nor would the erroneous description by the legislature of Missouri, in naming the boundary of Platte county, in any way, affect the point in controversy in this case. The description, as given in the act of the legisalture, was sufficient for the purposes of the act. They did not have and could not

have had, at that time, any intention of agreeing to or establishing a state boundary line.

In *United States vs. State of Texas*, 162 U. S., 1, a similar proposition was discussed. It was there held that the inclusion of Greer County, Texas, among the counties named in the act of Congress of 1879, as constituting the Northern judicial district in Texas, merely placed the territory claimed to constitute that county, which the United States had claimed as a part of the Indian Territory, in that district for judicial purposes and was not intended to express the purpose of the United States to surrender its jurisdiction and does not admit the right of Texas to that territory. It was also held that the designation of a post-office as in Greer County, a petition of persons describing themselves as residents of such county, before the authorities of the post-office department discovered their error, does not strengthen the claim of Texas to such territory.

In the case of *Missouri vs. Iowa*, 7 How., U. S., 660, the history and location of the original western boundary of Missouri is fully discussed. While that case has no particular bearing upon the point at issue here, it may be of some assistance to the court in its examination of all the authorities bearing upon the controversy.

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HENRY M. BEARDSLEY,
of Counsel for Complainant.

STATE OF MISSOURI *v.* STATE OF KANSAS.

IN EQUITY.

No. 6, Original. Argued February 23, 1909.—Decided March 22, 1909.

The boundary line between Missouri and Kansas is and remains, notwithstanding its shifting position by erosion, the middle of the Missouri River from a point opposite the middle of the mouth of the Kansas or Kaw River.

The act of June 7, 1836, c. 86, 5 Stat. 34, altering the western boundary of Missouri, is to be construed in the light of extrinsic facts; and, as so construed, its object was not to add territory to the State but to substitute the Missouri River as a practical boundary, so far as possible, instead of an ideal line along a meridian.

The result of this decision is that an island in the Missouri River west of the centre of its main channel, as that channel now exists, belongs to Kansas, notwithstanding such island is east of the original boundary line of Missouri.

THE facts are stated in the opinion.

Mr. Elliott W. Major, Attorney General of the State of Missouri, and *Mr. Hunter M. Meriwether*, with whom *Mr. Henry M. Beardsley* was on the brief, for complainant:

There is no dispute as to the location of the western boundary of Missouri for the two and one-half or three miles north of the mouth of the Kansas River, prior to 1837. See constitution of Missouri of 1820. The west line of the State was therein laid down as a meridian line passing through the mouth of the Kansas River.

The maps in evidence show that in 1836–37 the Missouri River had moved to the east so far that the first two and one-half miles of the old west boundary line surveyed by Sullivan were in the river.

On March 28, 1837, the land lying between the old state boundary and the Missouri River was added to the State, and

no change was made in the boundary line except where land lay between the old state-line and the river. Act of June 7, 1836, c. 86, 5 Stat. 34. It is clear from this act that the boundary of the State was not changed except where there were lands lying between the old boundary and the Missouri River, in which case the boundary was *extended* to the river. Since, therefore, the old boundary line was already in the stream for the first two and one-half miles north of the mouth of the Kansas River, no lands were added there and no change of boundary there took place.

There is no evidence to support the contention that Missouri and Kansas have by a long course of conduct regarded the shifting channel of the Missouri River over these two and one-half miles as the border line between the States rather than the true north and south line. It requires the consent of the States and Congress to change a state boundary; so no change could be made without the concurrent action of all three sovereignties. But there is no evidence that the States have agreed upon any other than the true boundary. Kansas in framing her constitution made her east line in terms "the west line of the State of Missouri." Much stress was by Kansas at the hearing put upon the language of the several statutes of the State of Missouri giving the boundaries of the counties of Platte and Clay and Jackson in Missouri and of the State of Kansas giving boundaries of the counties of Wyandotte and Johnson in that State. The legislative acts can in no wise be regarded as attempts to define the boundaries of the State. Such boundaries could not be so defined. They, on the other hand, give the boundaries of these counties with reference to the land as it at the time lay. The state line was in the Missouri River. There was no desire to take account, in fixing county boundaries, of land lying then within the river.

The determination of the true line as the western boundary of Missouri, at the point in question, depends entirely upon the construction of the terms of the act of June 7, 1836, extending western boundary to the Missouri River. Missouri, by an

amendment to its constitution, adopted the line thus established but it did not cede or waive its rights of soil and jurisdiction over any portion of its original territory. It is established by the proof that at the point in dispute the western boundary of the State was already in the Missouri River.

The rule is that where a power possesses a river and cedes the territory on the other side of it, making the river the boundary, that power retains the river, unless there is an express stipulation for the relinquishment of the rights of soil and jurisdiction over the bed of such river. *Howard* v. *Ingersoll*, 13 Howard, 381.

If there was anything doubtful or indefinite in the language of the act of June 7, 1836, or in the line as established by it, the subsequent acts of the parties affected thereby as well as local conditions determine a proper construction of what was meant by the act, but the language, itself, is plain and no other assistance is needed. *Alabama* v. *Georgia*, 24 How. 505.

Mr. F. S. Jackson, Attorney General of the State of Kansas, *Mr. John S. Dawson* and *Mr. C. C. Coleman*, for defendant, submitted:

The act of 1836 extending the jurisdiction of the State of Missouri over the lands between said State and the Missouri River, and extending the western boundary of said State to the Missouri River, was an authoritative establishment of the boundary line of that State to the meridian line of the channel of the Missouri River from the mouth of the Kansas River north to the northern boundary of the State. See Memorial, General Assembly of Missouri, approved January 15, 1831; *St. Joseph R. R. Co.* v. *Devereux*, 41 Fed. Rep. 14.

The State of Missouri, having accepted such determination of its boundary and all of the officials and people of the State having acted in accordance therewith since 1836 until the present time, and her sister States of Kansas and Nebraska having also acted on such understanding, such boundary line of the State of Missouri became fixed on the thread of the

Missouri River channel at all points above the mouth of the Kansas River, and such boundary cannot now be questioned by the State of Missouri.

Where a river is declared to be the boundary between States, if such river suddenly change its course or desert the original channel as the result of a great flood or what is commonly known as an avulsion, the boundary between such States remains in the middle of the deserted river bed, but if the river change imperceptibly, from natural causes, the river as it runs continues to be the boundary between the two States. *Cooley* v. *Golden*, 52 Mo. App. Rep. 229; *Iowa* v. *Nebraska*, 143 U. S. 359.

Where a river is the boundary-line between two States, the jurisdiction of said States is concurrent over the channel of the river to the meridian line of said channel, but where an island arises and exists on the bed of said river and the main channel of the river flows to one side only of the island, such island is within the jurisdiction of the State nearest to which it is located. *McBaine* v. *Johnson*, 155 Missouri, 203; *East Omaha Land Co.* v. *Hanson*, 117 Iowa, 97; *S. C.*, 90 N. W. Rep. 706; *De Long* v. *Olsan*, 63 Nebraska, 331; *S. C.*, 88 N. W. Rep. 514.

Mr. Justice Holmes delivered the opinion of the court.

This is a bill to establish the western boundary of the State of Missouri for a short distance above Kansas City in that State. The object of Missouri is to maintain title to an island of about four hundred acres in the Missouri River, now lying close to Kansas City, Missouri, and Kansas City, Kansas. The State of Kansas claims the same island by answer and what it terms a crossbill. A few words will explain the issue between the parties. When Missouri was admitted to the Union its western boundary at this point was a meridian running due north. There was land between a part of this line and the Missouri River. By treaty with the Indians and act

of Congress on the petition of Missouri, that State was granted jurisdiction over such land and its boundary was extended to the Missouri River. Since that time the river has been moving eastward by gradual erosion, and at the place in controversy has passed to the east of the original line. The land in question lies to the east of the line and the claim of Missouri is that, whatever the change in the river, its jurisdiction remains to that line.

Missouri fortifies its claim by an allegation that the line at the place in controversy never was changed. According to the bill, the line as surveyed began at a point on the left bank of the Missouri River, opposite the mouth of the Kansas or Kaw, for two miles and a half "practically conformed with the left bank of the Missouri," and by the shifting of the stream was in the river when the act of Congress was passed, so that there was no land to be added there, and the original boundary remained. Kansas denies that the original line conformed to the left bank of the river, and says that even if Missouri is right with regard to the facts, the result of the change was to make the Missouri River the boundary between the States from the north to the point where the Missouri and the Kansas meet.

To decide the case it is necessary to construe the laws by which the boundary of Missouri was changed. The first step to that end was a memorial of the General Assembly of Missouri to Congress, dated January 15, 1831. The sum of it is this. Many inconveniences have arisen from the improvident manner in which parts of the boundaries have been designated. When the state government was formed the whole country on the west and north was a wilderness and its geography unwritten. The precise position of that part of the line passing through the middle of the mouth of the Kansas River, which lies north of the Missouri, is unknown, but it is believed to run almost parallel with the course of the stream, so as to leave a narrow strip of land varying in breadth from fifteen to thirty miles. Great calamities are to be feared from the Indians on

the frontier. Therefore it is necessary to interpose, "whenever it is possible, some visible boundary and natural barrier between the Indians and the whites." The Missouri River will afford this barrier "by extending the north boundary of this State in a straight line westward, until it strikes the Missouri, so as to include within this State the small district of country between that line and the river." There is more, but the main point of the memorial is to secure a natural barrier between Indians and whites, and, in addition, easier access to "the only great road to market." A few square miles, more or less, of savage territory were of no account, but the object was to get the river for a bound.

There was a report to the Senate on April 8, 1834, which adopted the foregoing reasons, and recommended making the Missouri River "the western boundary to the mouth of the Kansas River." Senate Doc. No. 263, 23d Cong. 1st Sess. On February 12, 1836, there was a report to the House of Representatives on the same subject. It referred to a bill that had been reported, authorizing the President to run the boundary line, and mentioned that the bill had been amended by directing the line to be run from the mouth of the Kansas River up the Missouri River, etc. It stated that the Indian title to the lands in question might be extinguished and ought to be, because those lands ought to form part of the State of Missouri. As a reason it mentioned that when Missouri was admitted into the Union it was expected that other States would be formed on the west, in which case the use of the Missouri would have been equally convenient, whether it was the border line or not; since then, however, the Indians had been located on the frontier, thus hampering access to the river. As a final argument it added that to make the river the boundary would be for the advantage of both the Indians and the whites. In conclusion, "to carry into effect the ultimate object of the resolution," it reported "A Bill to extend the western boundary of the State of Missouri to the Missouri River." H. R. No. 379, 24th Cong. 1st Sess. This bill was passed, and became the act of Congress

on which this controversy turns. It provides that "when the Indian title to all the lands lying between the State of Missouri and the Missouri River shall be extinguished, the jurisdiction over said lands shall be hereby ceded to the State of Missouri, and the western boundary of said State shall be then extended to the Missouri River." These are the only material words. Act of June 7, 1836, c. 86, 5 Stat. 34.

In anticipation of the action of Congress the constitution of Missouri was amended as follows: "That the boundary of the State be so altered and extended as to include all that tract of land lying on the north side of the Missouri River, and west of the present boundary of this State, so that the same shall be bounded on the south by the middle of the main channel of the Missouri River, and on the north by the present northern boundary line of the State, as established by the Constitution, when the same is continued in a right line to the west, or to include so much of said tract of land as Congress may assent." Amendment ratified at the Session of 1834–5, Article II, § 4. Mo. Rev. Sts. 1856, p. 91. Then, on December 16, 1836, the State assented to the act of Congress by "An Act to express the assent of the State of Missouri to the extension of the western boundary line of the State." Laws 1st Sess. 9th Genl. Assembly, p. 28; and, on January 17, 1837, a copy was transmitted to Congress by the President. Meantime, on September 17, 1836, a treaty was made with the Indians, in which they expressed their belief in the advantage of a natural boundary between them and the whites and released their claims. Indian Affairs. Laws and Treaties. Compiled by Kappler, 1904, p. 468. On March 28, 1837, the President, by proclamation, declared that the Indian title to lands had been extinguished, in pursuance of the condition in the act of Congress, and the act went into full effect. 5 Stats. 802. Appendix No. 1.

Whatever might be the interpretation of the act taken by itself and applied between two long settled communities, we think that the circumstances and the history of the steps that led to it show that the object throughout was that expressed

by the memorial; as we have said, not to gain some square miles of wilderness, but to substitute the Missouri River for an ideal line as the western boundary of the State, so far as possible, that is from the northern boundary to the mouth of the Kaw. That this was understood by Missouri to be the effect of the act is shown by a succession of statutes declaring the boundaries of the river counties in this part. They all adopted the middle of the main channel of the river; beginning with the act that organized the county of Platte, approved December 31, 1838, Mo. Laws, 1838, pp. 23–25, and going on through the Revised Statutes of 1855, p. 459, § 12 (Clay), p. 466, § 33 (Platte), p. 478, § 65 (Jackson), etc., to 2 Revised Statutes, 1879, ch. 94, §§ 5177, 5198 & 5237. The construction is contemporaneous and long continued, and we regard it as clear. It is confirmed by the cases of *Cooley* v. *Golden*, 52 Mo. App. 229, and *St. Joseph & G. I. R. Co.* v. *Devereux*, 41 Fed. Rep. 14, both of which cases notice that the act extended the boundary to the river, and not merely to the bank.

It follows upon our interpretation that it is unnecessary to consider the evidence as to precisely where the line as surveyed ran from opposite the mouth of the Kansas or Kaw. If the understanding both of the United States and the State had not been a wholesale adoption of the river as a boundary, without any niceties, still, as the cession "to the river" extended to the center of the stream, it might be argued that even on Missouri's evidence there probably was a strip ceded at the place in dispute. But from the view that we take such refinements are out of place. The act has to be read with reference to extrinsic facts because it fixes no limits except by implication. We are of opinion that the limit implied is a point in the middle of the Missouri opposite the middle of the mouth of the Kaw.

Decree for the defendant.